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HOUSE BILL 9

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Mimi Stewart

AN ACT

RELATING TO UNEMPLOYMENT COMPENSATION; AMENDING PROVISIONS OF THE UNEMPLOYMENT COMPENSATION LAW TO INCREASE AND EXTEND BENEFITS, DECREASE EMPLOYERS' CONTRIBUTIONS AND ELIMINATE CERTAIN RESTRICTIONS ON ELIGIBILITY FOR BENEFITS; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 51-1-4 NMSA 1978 (being Laws 2003, Chapter 47, Section 8) is amended to read:

"51-1-4. MONETARY COMPUTATION OF BENEFITS--PAYMENT GENERALLY.--

A. All benefits provided herein are payable from the unemployment compensation fund. All benefits shall be paid in accordance with rules prescribed by the secretary through employment offices or other agencies as the secretary approves

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1 by general rule.

2 B. Weekly benefits shall be as follows:

3 (1) an individual's "weekly benefit amount" is
4 an amount equal to [~~one twenty-sixth of the total wages~~] fifty-
5 two and one-half percent of the average weekly wage for insured
6 work paid to the individual in that quarter of the individual's
7 base period in which total wages were highest. No benefit as
8 so computed may be less than ten percent or more than fifty-two
9 and one-half percent of the state's average weekly wage for all
10 insured work. The state's average weekly wage shall be
11 computed from all wages reported to the department from
12 employing units in accordance with rules of the secretary for
13 the period ending June 30 of each calendar year divided by the
14 total number of covered employees divided by fifty-two,
15 effective for the benefit years commencing on or after the
16 first Sunday of the following calendar year. An individual is
17 not eligible to receive benefits unless the individual has
18 wages in at least two quarters of that individual's base
19 period. For the purposes of this subsection, "total wages"
20 means all remuneration for insured work, including commissions
21 and bonuses and the cash value of all remuneration in a medium
22 other than cash;

23 (2) an eligible individual who is unemployed
24 in any week during which the individual is in a continued
25 claims status shall be paid, with respect to the week, a

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1 benefit in an amount equal to the individual's weekly benefit
2 amount, less that part of the wages, if any, or earnings from
3 self-employment, payable to the individual with respect to such
4 week that is in excess of one-fifth of the individual's weekly
5 benefit amount. For purposes of this subsection only, "wages"
6 includes all remuneration for services actually performed in a
7 week for which benefits are claimed, vacation pay for a period
8 for which the individual has a definite return-to-work date,
9 wages in lieu of notice and back pay for loss of employment but
10 does not include payments through a court for time spent in
11 jury service;

12 (3) notwithstanding any other provision of
13 this section, an eligible individual who, pursuant to a plan
14 financed in whole or in part by a base-period employer of the
15 individual, is receiving a governmental or other pension,
16 retirement pay, annuity or any other similar periodic payment
17 that is based on the previous work of the individual and who is
18 unemployed with respect to any week ending subsequent to April
19 9, 1981 shall be paid with respect to the week, in accordance
20 with rules prescribed by the secretary, compensation equal to
21 the individual's weekly benefit amount reduced, but not below
22 zero, by the prorated amount of the pension, retirement pay,
23 annuity or other similar periodic payment that exceeds the
24 percentage contributed to the plan by the eligible individual.
25 The maximum benefit amount payable to the eligible individual

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1 shall be an amount not more than twenty-six times [~~his~~] the
2 individual's reduced weekly benefit amount. If payments
3 referred to in this section are being received by an individual
4 under the federal Social Security Act, the division shall take
5 into account the individual's contribution and make no
6 reduction in the weekly benefit amount;

7 (4) in the case of a lump-sum payment of a
8 pension, retirement or retired pay, annuity or other similar
9 payment by a base-period employer that is based on the previous
10 work of the individual, the payment shall be allocated, in
11 accordance with rules prescribed by the secretary, and shall
12 reduce the amount of unemployment compensation paid, but not
13 below zero, in accordance with Paragraph (3) of this
14 subsection; and

15 (5) the retroactive payment of a pension,
16 retirement or retired pay, annuity or any other similar
17 periodic payment as provided in Paragraphs (3) and (4) of this
18 subsection attributable to weeks during which an individual has
19 claimed or has been paid unemployment compensation shall be
20 allocated to those weeks and shall reduce the amount of
21 unemployment compensation for those weeks, but not below zero,
22 by an amount equal to the prorated amount of the pension. Any
23 overpayment of unemployment compensation benefits resulting
24 from the application of the provisions of this paragraph shall
25 be recovered from the claimant in accordance with the

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1 provisions of Section 51-1-38 NMSA 1978.

2 C. An individual otherwise eligible for benefits
3 shall be paid for each week of unemployment, in addition to the
4 amount payable under Subsection B of this section, the sum of
5 fifteen dollars (\$15.00) for each unemancipated child, up to a
6 maximum of four and subject to the maximum stated in Subsection
7 D of this section, of the individual who is in fact dependent
8 upon and wholly or mainly supported by the individual and is:

9 (1) under the age of eighteen;

10 (2) under the age of eighteen and in the
11 individual's custody pending the adjudication of a petition
12 filed by the individual for the adoption of the child in a
13 court of competent jurisdiction; or

14 (3) under the age of eighteen and for whom the
15 individual is under a decree or order from a court of competent
16 jurisdiction required to contribute to the child's support and
17 for whom no other person is receiving allowances under the
18 Unemployment Compensation Law if the child is domiciled within
19 the United States or its territories or possessions, the
20 payment to be withheld and paid pursuant to Section 51-1-37.1
21 NMSA 1978.

22 D. Dependency benefits shall not exceed fifty
23 percent of the individual's weekly benefit rate. The amount of
24 dependency benefits determined as of the beginning of an
25 individual's benefit year shall not be reduced for the duration

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1 of the benefit year, but this provision does not prevent the
2 transfer of dependents' benefits from one spouse to another in
3 accordance with this subsection. If both the husband and wife
4 receive benefits with respect to a week of unemployment, only
5 one of them is entitled to a dependency allowance with respect
6 to a child. The division shall prescribe standards as to who
7 may receive a dependency allowance when both the husband and
8 wife are eligible to receive unemployment compensation
9 benefits. Dependency benefits shall not be paid unless the
10 individual submits documentation satisfactory to the division
11 establishing the existence of the claimed dependent. If the
12 provisions of this subsection are satisfied, an otherwise
13 eligible individual who has been appointed guardian of a
14 dependent child by a court of competent jurisdiction shall be
15 paid dependency benefits.

16 ~~[G.]~~ E. An otherwise eligible individual is
17 entitled during any benefit year to a total amount of benefits
18 equal to whichever is the lesser of twenty-six times the
19 individual's weekly benefit amount, plus any dependency benefit
20 amount pursuant to Subsections C and D of this section, or
21 sixty percent of the individual's wages for insured work paid
22 during the individual's base period.

23 ~~[D.]~~ F. A benefit as determined in Subsection B or
24 C of this section, if not a multiple of one dollar (\$1.00),
25 shall be rounded to the next lower multiple of one dollar

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1 (\$1.00).

2 [~~E-~~] G. The secretary may prescribe rules to
3 provide for the payment of benefits that are due and payable to
4 the legal representative, dependents, relatives or next of kin
5 of claimants since deceased. These rules need not conform with
6 the laws governing successions, and the payment shall be deemed
7 a valid payment to the same extent as if made under a formal
8 administration of the succession of the claimant.

9 [~~F-~~] H. The division, on its own initiative, may
10 reconsider a monetary determination whenever it is determined
11 that an error in computation or identity has occurred or that
12 wages of the claimant pertinent to such determination but not
13 considered have been newly discovered or that the benefits have
14 been allowed or denied on the basis of misrepresentation of
15 fact, but no redetermination shall be made after one year from
16 the date of the original monetary determination. Notice of a
17 redetermination shall be given to all interested parties and
18 shall be subject to an appeal in the same manner as the
19 original determination. In the event that an appeal involving
20 an original monetary determination is pending at the time a
21 redetermination is issued, the appeal, unless withdrawn, shall
22 be treated as an appeal from redetermination."

23 Section 2. Section 51-1-5 NMSA 1978 (being Laws 2003,
24 Chapter 47, Section 9) is amended to read:

25 "51-1-5. BENEFIT ELIGIBILITY CONDITIONS.--

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1 A. An unemployed individual shall be eligible to
2 receive benefits with respect to any week only if the
3 individual:

4 (1) has made a claim for benefits with respect
5 to such week in accordance with such rules as the secretary may
6 prescribe;

7 (2) has registered for work at, and thereafter
8 continued to report at, an employment office in accordance with
9 such rules as the secretary may prescribe, except that the
10 secretary may, by rule, waive or alter either or both of the
11 requirements of this paragraph as to individuals attached to
12 regular jobs and as to such other types of cases or situations
13 with respect to which the secretary finds that compliance with
14 such requirements would be oppressive or would be inconsistent
15 with the purposes of the Unemployment Compensation Law. No
16 such rule shall conflict with Subsection A of Section 51-1-4
17 NMSA 1978;

18 (3) is able to work and is available for work
19 and is actively seeking permanent [~~and substantially~~] full-time
20 work or part-time work in accordance with Subsection I of
21 Section 51-1-42 NMSA 1978 and in accordance with the terms,
22 conditions and hours common in the occupation or business in
23 which the individual is seeking work, except that the secretary
24 may, by rule, waive this requirement for individuals who are on
25 temporary layoff status from their regular employment with an

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1 assurance from their employers that the layoff shall not exceed
2 four weeks or who have an express offer in writing of
3 substantially full-time work that will begin within a period
4 not exceeding four weeks;

5 (4) has been unemployed for a waiting period
6 of one week. A week shall not be counted as a week of
7 unemployment for the purposes of this paragraph:

8 (a) unless it occurs within the benefit
9 year that includes the week with respect to which the
10 individual claims payment of benefits;

11 (b) if benefits have been paid with
12 respect thereto; and

13 (c) unless the individual was eligible
14 for benefits with respect thereto as provided in this section
15 and Section 51-1-7 NMSA 1978, except for the requirements of
16 this subsection and of Subsection D of Section 51-1-7 NMSA
17 1978;

18 (5) has been paid wages in at least two
19 quarters of the individual's base period;

20 (6) has reported to an office of the division
21 in accordance with the rules of the secretary for the purpose
22 of an examination and review of the individual's availability
23 for and search for work, for employment counseling, referral
24 and placement and for participation in a job finding or
25 employability training and development program. An individual

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1 shall not be denied benefits under this section for any week
2 that the individual is participating in a job finding or
3 employability training and development program; and

4 (7) participates in reemployment services,
5 such as job search assistance services, if the division
6 determines that the individual is likely to exhaust regular
7 benefits and need reemployment services pursuant to a profiling
8 system established by the division, unless the division
9 determines that:

10 (a) the individual has completed such
11 services; or

12 (b) there is justifiable cause for the
13 individual's failure to participate in the services.

14 B. A benefit year as provided in Section 51-1-4
15 NMSA 1978 and Subsection P of Section 51-1-42 NMSA 1978 may be
16 established; provided an individual may not receive benefits in
17 a benefit year unless, subsequent to the beginning of the
18 immediately preceding benefit year during which the individual
19 received benefits, the individual performed service in
20 "employment", as defined in Subsection F of Section 51-1-42
21 NMSA 1978, and earned remuneration for such service in an
22 amount equal to at least five times the individual's weekly
23 benefit amount.

24 C. Benefits based on service in employment defined
25 in Paragraph (8) of Subsection F of Section 51-1-42 and Section
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1 51-1-43 NMSA 1978 are to be paid in the same amount, on the
2 same terms and subject to the same conditions as compensation
3 payable on the basis of other services subject to the
4 Unemployment Compensation Law; except that:

5 (1) benefits based on services performed in an
6 instructional, research or principal administrative capacity
7 for an educational institution shall not be paid for any week
8 of unemployment commencing during the period between two
9 successive academic years or terms or, when an agreement
10 provides for a similar period between two regular but not
11 successive terms, during such period or during a period of paid
12 sabbatical leave provided for in the individual's contract, to
13 any individual if the individual performs such services in the
14 first of such academic years or terms and if there is a
15 contract or a reasonable assurance that the individual will
16 perform services in any such capacity for any educational
17 institution in the second of such academic years or terms;

18 (2) benefits based on services performed for
19 an educational institution other than in an instructional,
20 research or principal administrative capacity shall not be paid
21 for any week of unemployment commencing during a period between
22 two successive academic years or terms if the services are
23 performed in the first of such academic years or terms and
24 there is a reasonable assurance that the individual will
25 perform services for any educational institution in the second

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1 of such academic years or terms. If compensation is denied to
2 an individual under this paragraph and the individual was not
3 offered an opportunity to perform such services for the
4 educational institution for the second of such academic years
5 or terms, the individual shall be entitled to a retroactive
6 payment of benefits for each week for which the individual
7 filed a claim and certified for benefits in accordance with the
8 rules of the division and for which benefits were denied solely
9 by reason of this paragraph;

10 (3) benefits shall be denied to any individual
11 for any week that commences during an established and customary
12 vacation period or holiday recess if the individual performs
13 any services described in Paragraphs (1) and (2) of this
14 subsection in the period immediately before such period of
15 vacation or holiday recess and there is a reasonable assurance
16 that the individual will perform any such services in the
17 period immediately following such vacation period or holiday
18 recess;

19 (4) benefits shall not be payable on the basis
20 of services specified in Paragraphs (1) and (2) of this
21 subsection during the periods specified in Paragraphs (1), (2)
22 and (3) of this subsection to any individual who performed such
23 services in or to or on behalf of an educational institution
24 while in the employ of a state or local governmental
25 educational service agency or other governmental entity or

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1 nonprofit organization; and

2 (5) for the purpose of this subsection, to the
3 extent permitted by federal law, "reasonable assurance" means a
4 reasonable expectation of employment in a similar capacity in
5 the second of such academic years or terms based upon a
6 consideration of all relevant factors, including the historical
7 pattern of reemployment in such capacity, a reasonable
8 anticipation that such employment will be available and a
9 reasonable notice or understanding that the individual will be
10 eligible for and offered employment in a similar capacity.

11 D. Paragraphs (1), (2), (3), (4) and (5) of
12 Subsection C of this section shall apply to services performed
13 for all educational institutions, public or private, for profit
14 or nonprofit, which are operated in this state or subject to an
15 agreement for coverage under the Unemployment Compensation Law
16 of this state, unless otherwise exempt by law.

17 E. Notwithstanding any other provisions of this
18 section or Section 51-1-7 NMSA 1978, no otherwise eligible
19 individual is to be denied benefits for any week because the
20 individual is in training or attending school on a full-time
21 basis with the approval of the division nor is the individual
22 to be denied benefits by reason of application of provisions in
23 Paragraph (3) of Subsection A of this section or [~~Subsection C~~]
24 Paragraph (3) of Subsection A of Section 51-1-7 NMSA 1978 with
25 respect to any week in which the individual is in training or

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1 attending school on a full-time basis with the approval of the
2 division. The secretary shall provide, by rule, standards for
3 approved training and the conditions for approving training for
4 claimants, including any training approved or authorized for
5 approval pursuant to Section 236(a)(1) and (2) of the Trade Act
6 of 1974, as amended, or required to be approved as a condition
7 for certification of the state's Unemployment Compensation Law
8 by the United States secretary of labor.

9 F. Notwithstanding any other provisions of this
10 section, benefits shall not be payable on the basis of services
11 performed by an alien unless such alien is an individual who
12 was lawfully admitted for permanent residence at the time the
13 services were performed, was lawfully present for the purposes
14 of performing the services or was permanently residing in the
15 United States under color of law at the time the services were
16 performed, including an alien who was lawfully present in the
17 United States as a result of the application of the provisions
18 of Section 212(d)(5) of the Immigration and Nationality Act;
19 provided that:

20 (1) any information required of individuals
21 applying for benefits to determine their eligibility for
22 benefits under this subsection shall be uniformly required from
23 all applicants for benefits; and

24 (2) an individual shall not be denied benefits
25 because of the individual's alien status except upon a

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1 preponderance of the evidence.

2 G. Notwithstanding any other provision of this
3 section, benefits shall not be paid to any individual on the
4 basis of any services substantially all of which consist of
5 participating in sports or athletic events or training or
6 preparing to so participate for any week that commences during
7 the period between two successive sport seasons, or similar
8 periods, if the individual performed the services in the first
9 of such seasons, or similar periods, and there is a reasonable
10 assurance that the individual will perform the services in the
11 latter of such seasons or similar periods.

12 ~~[H. Students who are enrolled in a full-time course~~
13 ~~schedule in an educational or training institution or program,~~
14 ~~other than those persons in an approved vocational training~~
15 ~~program in accordance with Subsection E of this section, shall~~
16 ~~not be eligible for unemployment benefits except as provided by~~
17 ~~regulations promulgated by the secretary.~~

18 ~~F.]~~ H. As used in this subsection, "seasonal ski
19 employee" means an employee who has not worked for a ski area
20 operator for more than six consecutive months of the previous
21 twelve months or nine of the previous twelve months. An
22 employee of a ski area operator who has worked for a ski area
23 operator for six consecutive months of the previous twelve
24 months or nine of the previous twelve months shall not be
25 considered a seasonal ski employee. The following benefit

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1 eligibility conditions apply to a seasonal ski employee:

2 (1) except as provided in Paragraphs (2) and
3 (3) of this subsection, a seasonal ski employee employed by a
4 ski area operator on a regular seasonal basis shall be
5 ineligible for a week of unemployment benefits that commences
6 during a period between two successive ski seasons unless the
7 individual establishes to the satisfaction of the secretary
8 that the individual is available for and is making an active
9 search for permanent full-time work;

10 (2) a seasonal ski employee who has been
11 employed by a ski area operator during two successive ski
12 seasons shall be presumed to be unavailable for permanent new
13 work during a period after the second successive ski season
14 that the individual was employed as a seasonal ski employee;
15 and

16 (3) the presumption described in Paragraph (2)
17 of this subsection shall not arise as to any seasonal ski
18 employee who has been employed by the same ski area operator
19 during two successive ski seasons and has resided continuously
20 for at least twelve successive months and continues to reside
21 in the county in which the ski area facility is located.

22 [~~J.~~] I. Notwithstanding any other provision of this
23 section, an otherwise eligible individual shall not be denied
24 benefits for any week by reason of the application of Paragraph
25 (3) of Subsection A of this section because the individual is

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1 before any court of the United States or any state pursuant to
2 a lawfully issued summons to appear for jury duty."

3 Section 3. Section 51-1-7 NMSA 1978 (being Laws 2003,
4 Chapter 47, Section 10) is amended to read:

5 "51-1-7. DISQUALIFICATION FOR BENEFITS.--

6 A. An individual shall be disqualified for and
7 shall not be eligible to receive benefits:

8 (1) if it is determined by the division that
9 the individual left employment voluntarily without good cause
10 in connection with the employment; provided, however, that a
11 person shall not be denied benefits under this paragraph:

12 (a) solely on the basis of pregnancy or
13 the termination of pregnancy; or

14 (b) because of domestic abuse evidenced
15 by medical documentation, legal documentation or a sworn
16 statement from the claimant;

17 (2) if it is determined by the division that
18 the individual has been discharged for misconduct connected
19 with the individual's employment; or

20 (3) if it is determined by the division that
21 the individual has failed without good cause either to apply
22 for available, suitable work when so directed or referred by
23 the division or to accept suitable work when offered.

24 B. In determining whether or not any work is
25 suitable for an individual pursuant to Paragraph (3) of

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1 Subsection A of this section, the division shall consider the
2 degree of risk involved to the individual's health, safety and
3 morals, the individual's physical fitness, prior training,
4 approved training or full-time school attendance, experience,
5 prior earnings, length of unemployment and prospects for
6 securing local work in the individual's customary occupation
7 and the distance of available work from the individual's
8 residence. Notwithstanding any other provisions of the
9 Unemployment Compensation Law, no work shall be deemed suitable
10 and benefits shall not be denied under the Unemployment
11 Compensation Law to any otherwise eligible individual for
12 refusing to accept new work under any of the following
13 conditions:

14 (1) if the position offered is vacant due
15 directly to a strike, lockout or other labor dispute;

16 (2) if the wages, hours or other conditions of
17 the work offered are substantially less favorable to the
18 individual than those prevailing for similar work in the
19 locality; or

20 (3) if, as a condition of being employed, the
21 individual would be required to join a company union or to
22 resign from or refrain from joining any bona fide labor
23 organizations.

24 C. An individual shall be disqualified for, and
25 shall not be eligible to receive, benefits for any week with

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1 respect to which the division finds that the individual's
2 unemployment is due to a labor dispute at the factory,
3 establishment or other premises at which the individual is or
4 was last employed; provided that this subsection shall not
5 apply if it is shown to the satisfaction of the division that:

6 (1) the individual is not participating in or
7 directly interested in the labor dispute; and

8 (2) the individual does not belong to a grade
9 or class of workers of which, immediately before the
10 commencement of the labor dispute, there were members employed
11 at the premises at which the labor dispute occurs, any of whom
12 are participating in or directly interested in the dispute;
13 provided that if in any case separate branches of work that are
14 commonly conducted in separate businesses in separate premises
15 are conducted in separate departments of the same premises,
16 each such department shall, for the purposes of this
17 subsection, be deemed to be a separate factory, establishment
18 or other premises.

19 D. An individual shall be disqualified for, and
20 shall not be eligible to receive, benefits for any week with
21 respect to which, or a part of which, the individual has
22 received or is seeking, through any agency other than the
23 division, unemployment benefits under an unemployment
24 compensation law of another state or of the United States;
25 provided that if the appropriate agency of such other state or

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1 of the United States finally determines that the individual is
2 not entitled to such unemployment benefits, this
3 disqualification shall not apply.

4 E. A disqualification pursuant to Paragraph (1) or
5 (2) of Subsection A of this section shall continue for the
6 duration of the individual's unemployment and until the
7 individual has earned wages in bona fide employment other than
8 self-employment, as provided by rule of the secretary, in an
9 amount equivalent to five times the individual's weekly benefit
10 otherwise payable. A disqualification pursuant to Paragraph
11 (3) of Subsection A of this section shall include the week the
12 failure occurred and shall continue for the duration of the
13 individual's unemployment and until the individual has earned
14 wages in bona fide employment other than self-employment, as
15 provided by rule of the secretary, in an amount equivalent to
16 five times the individual's weekly benefit amount otherwise
17 payable; provided that no more than one such disqualification
18 shall be imposed upon an individual for failure to apply for or
19 accept the same position, or a similar position, with the same
20 employer, except upon a determination by the division of
21 disqualification pursuant to Subsection C of this section.

22 F. As used in this section:

23 (1) "domestic abuse" means that term as
24 defined in Section 40-13-2 NMSA 1978; and

25 (2) "employment" means employment by the

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1 individual's last employer as defined by rules of the
2 secretary."

3 Section 4. Section 51-1-11 NMSA 1978 (being Laws 2003,
4 Chapter 47, Section 11) is amended to read:

5 "51-1-11. FUTURE RATES BASED ON BENEFIT EXPERIENCE.--

6 A. The division shall maintain a separate account
7 for each contributing employer and shall credit the
8 contributing employer's account with all contributions paid by
9 that employer under the Unemployment Compensation Law. Nothing
10 in the Unemployment Compensation Law shall be construed to
11 grant an employer or individuals in the employer's service
12 prior claims or rights to the amounts paid by the employer into
13 the fund.

14 B. Benefits paid to an individual shall be charged
15 against the accounts of the individual's base-period employers
16 on a pro rata basis according to the proportion of the
17 individual's total base-period wages received from each
18 employer, except that no benefits paid to a claimant as
19 extended benefits under the provisions of Section 51-1-48 NMSA
20 1978 shall be charged to the account of any base-period
21 employer who is not on a reimbursable basis and who is not a
22 governmental entity and, except as the secretary shall by rule
23 prescribe otherwise, in the case of benefits paid to an
24 individual who:

25 (1) left the employ of a base-period employer

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1 who is not on a reimbursable basis voluntarily without good
2 cause in connection with the individual's employment;

3 (2) was discharged from the employment of a
4 base-period employer who is not on a reimbursable basis for
5 misconduct connected with the individual's employment;

6 (3) is employed part time by a base-period
7 employer who is not on a reimbursable basis and who continues
8 to furnish the individual the same part-time work while the
9 individual is separated from full-time work for a
10 nondisqualifying reason; or

11 (4) received benefits based upon wages earned
12 from a base-period employer who is not on a reimbursable basis
13 while attending approved training or school on a full-time
14 basis under the provisions of Subsection E of Section 51-1-5
15 NMSA 1978.

16 C. The division shall not charge a contributing or
17 reimbursing base-period employer's account with any portion of
18 benefit amounts that the division can bill to or recover from
19 the federal government as either regular or extended benefits.

20 D. The division shall not charge a contributing
21 base-period employer's account with any portion of benefits
22 paid to an individual for dependent allowance or because the
23 individual to whom benefits are paid:

24 (1) separated from employment due to domestic
25 abuse; or

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1 (2) is enrolled in approved training or is
2 attending school on a full-time basis.

3 ~~[D.]~~ E. All contributions to the fund shall be
4 pooled and available to pay benefits to any individual entitled
5 thereto, irrespective of the source of such contributions. The
6 standard rate of contributions payable by each employer shall
7 be five and four-tenths percent.

8 ~~[E.]~~ F. An employer's rate shall not be varied from
9 the standard rate for any calendar year unless, as of the
10 computation date for that year, the employer's account has been
11 chargeable with benefits throughout the preceding thirty-six
12 months, except that:

13 (1) the provisions of this subsection shall
14 not apply to governmental entities;

15 (2) ~~[subsequent to December 31, 1984]~~
16 beginning January 1, 2005, any employing unit that becomes an
17 employer subject to the payment of contributions under the
18 Unemployment Compensation Law or has been an employer subject
19 to the payment of contributions at a standard rate of two [~~and~~
20 ~~seven-tenths~~] percent through December 31, [~~1984~~] 2004, shall
21 be subject to the payment of contributions at the reduced rate
22 of two [~~and seven-tenths~~] percent until, as of the computation
23 date of a particular year, the employer's account has been
24 chargeable with benefits throughout the preceding thirty-six
25 months; [~~and~~]

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1 (3) any individual, type of organization or
2 employing unit that acquires all or part of the trade or
3 business of another employing unit, pursuant to Paragraphs (2)
4 and (3) of Subsection E of Section 51-1-42 NMSA 1978, that has
5 a reduced rate of contribution shall be entitled to the
6 transfer of the reduced rate to the extent permitted under
7 Subsection ~~[G]~~ H of this section;

8 (4) an employer that, at the time of
9 establishing an account, is in business in another state or
10 states and that is not currently doing business in New Mexico
11 may elect, pursuant to Paragraph (5) of this subsection, to
12 receive a beginning contribution rate of two percent or a
13 contribution rate based on the current contribution rate
14 schedule in Paragraph (4) of Subsection I of this section,
15 whichever is lower, if:

16 (a) the employer has been in operation
17 in the other state or states for at least three years
18 immediately preceding the date of becoming a liable employer in
19 New Mexico, throughout which an individual in the employer's
20 employ could have received benefits if eligible; and

21 (b) the employer provides the
22 authenticated account history as defined by rule of the
23 secretary from information accumulated from operations in the
24 other state or all the other states to compute a current New
25 Mexico rate; and

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1 (5) the election authorized in Paragraph (4)
2 of this subsection shall be made in writing within thirty days
3 after receiving notice of New Mexico liability and, if not made
4 timely, a two percent rate will be assigned; if the election is
5 made timely, the employer's account will receive the lesser of
6 the computed rate determined by the condition of the account
7 for the computation date immediately preceding the New Mexico
8 liable date, or the reduced rate of two percent; rates for
9 subsequent years will be determined by the condition of the
10 account for the computation date.

11 [F-] G. The secretary shall, for the year 1942 and
12 for each calendar year thereafter, classify employers in
13 accordance with their actual experience in the payment of
14 contributions and with respect to benefits charged against
15 their accounts, with a view of fixing such contribution rates
16 as will reflect such benefit experience. An employer's rate
17 for any calendar year shall be determined on the basis of the
18 employer's record and the condition of the fund as of the
19 computation date for such calendar year.

20 An employer may make voluntary payments in addition to the
21 contributions required under the Unemployment Compensation Law,
22 which shall be credited to the employer's account in accordance
23 with department rule. The voluntary payments shall be included
24 in the employer's account as of the employer's most recent
25 computation date if they are made on or before the following

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1 March 1. Voluntary payments when accepted from an employer
2 shall not be refunded in whole or in part.

3 [~~G~~] H. In the case of a transfer of an employing
4 enterprise, the experience history of the transferred
5 enterprise as provided in Subsection [~~F~~] G of this section
6 shall be transferred from the predecessor employer to the
7 successor under the following conditions and in accordance with
8 the applicable rules of the secretary:

9 (1) Definitions:

10 (a) "employing enterprise" is a business
11 activity engaged in by a contributing employing unit in which
12 one or more persons have been employed within the current or
13 the three preceding calendar quarters;

14 (b) "predecessor" means the owner and
15 operator of an employing enterprise immediately prior to the
16 transfer of such enterprise;

17 (c) "successor" means any individual or
18 any type of organization that acquires an employing enterprise
19 and continues to operate such business entity; and

20 (d) "experience history" means the
21 experience rating record and reserve account, including the
22 actual contributions, benefit charges and payroll experience of
23 the employing enterprise.

24 (2) For the purpose of this section, two or
25 more employers who are parties to or the subject of any

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1 transaction involving the transfer of an employing enterprise
2 shall be deemed to be a single employer and the experience
3 history of the employing enterprise shall be transferred to the
4 successor employer if the successor employer has acquired by
5 the transaction all of the business enterprises of the
6 predecessor; provided that:

7 (a) all contributions, interest and
8 penalties due from the predecessor employer have been paid;

9 (b) notice of the transfer has been
10 given in accordance with the rules of the secretary within four
11 years of the transaction transferring the employing enterprise
12 or the date of the actual transfer of control and operation of
13 the employing enterprise;

14 (c) in the case of the transfer of an
15 employing enterprise, the successor employer must notify the
16 division of the acquisition on or before the due date of the
17 successor employer's first wage and contribution report. If
18 the successor employer fails to notify the division of the
19 acquisition within this time limit, the division, when it
20 receives actual notice, shall effect the transfer of the
21 experience history and applicable rate of contribution
22 retroactively to the date of the acquisition, and the successor
23 shall pay a penalty of fifty dollars (\$50.00); and

24 (d) where the transaction involves only
25 a merger, consolidation or other form of reorganization without

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1 a substantial change in the ownership and controlling interest
2 of the business entity, as determined by the secretary, the
3 limitations on transfers stated in Subparagraphs (a), (b) and
4 (c) of this paragraph shall not apply. A party to a merger,
5 consolidation or other form of reorganization described in this
6 paragraph shall not be relieved of liability for any
7 contributions, interest or penalties due and owing from the
8 employing enterprise at the time of the merger, consolidation
9 or other form of reorganization.

10 (3) The applicable experience history may be
11 transferred to the successor in the case of a partial transfer
12 of an employing enterprise if the successor has acquired one or
13 more of the several employing enterprises of a predecessor but
14 not all of the employing enterprises of the predecessor and
15 each employing enterprise so acquired was operated by the
16 predecessor as a separate store, factory, shop or other
17 separate employing enterprise and the predecessor, throughout
18 the entire period of the contribution with liability applicable
19 to each enterprise transferred, has maintained and preserved
20 payroll records that, together with records of contribution
21 liability and benefit chargeability, can be separated by the
22 parties from the enterprises retained by the predecessor to the
23 satisfaction of the secretary or the secretary's delegate. A
24 partial experience history transfer will be made only if:

25 (a) the successor notifies the division

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1 of the acquisition, in writing, not later than the due date of
2 the successor's first quarterly wage and contribution report
3 after the effective date of the acquisition;

4 (b) the successor files an application
5 provided by the division that contains the endorsement of the
6 predecessor within thirty days from the delivery or mailing of
7 such application by the division to the successor's last known
8 address; and

9 (c) the successor files with the
10 application a Form ES-903A or its equivalent with a schedule of
11 the name and social security number of and the wages paid to
12 and the contributions paid for each employee for the three and
13 one-half year period preceding the computation date as defined
14 in Subparagraph (d) of Paragraph (3) of Subsection [H] I of
15 this section through the date of transfer or such lesser period
16 as the enterprises transferred may have been in operation. The
17 application and Form ES-903A shall be supported by the
18 predecessor's permanent employment records, which shall be
19 available for audit by the division. The application and Form
20 ES-903A shall be reviewed by the division and, upon approval,
21 the percentage of the predecessor's experience history
22 attributable to the enterprises transferred shall be
23 transferred to the successor. The percentage shall be obtained
24 by dividing the taxable payrolls of the transferred enterprises
25 for such three and one-half year period preceding the date of

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1 computation or such lesser period as the enterprises
2 transferred may have been in operation by the predecessor's
3 entire payroll.

4 [~~H.~~] I. For each calendar year, adjustments of
5 contribution rates below the standard or reduced rate and
6 measures designed to protect the fund are provided in
7 Paragraphs (1) through (4) of this subsection.

8 (1) The total assets in the fund and the total
9 of the last annual payrolls of all employers subject to
10 contributions as of the computation date for each year shall be
11 determined. These annual totals are here called "the fund" and
12 "total payrolls". For each year, the "reserve" of each
13 employer qualified under Subsection [~~E~~] F of this section shall
14 be fixed by the excess of the employer's total contributions
15 over total benefit charges computed as a percentage of the
16 employer's average payroll reported for contributions. The
17 determination of each employer's annual rate, computed as of
18 the computation date for each calendar year, shall be made by
19 matching the employer's reserve as shown in the reserve column
20 with the corresponding rate in the rate column of the
21 applicable rate schedule of the table provided in Paragraph (4)
22 of this subsection.

23 (2) Each employer's rate for each calendar
24 year commencing January 1, 1979 or thereafter shall be:

25 (a) the corresponding rate in Schedule 0

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1 of the table provided in Paragraph (4) of this subsection if
2 the fund equals at least three and seven-tenths percent of the
3 total payrolls;

4 [~~(a)~~] (b) the corresponding rate in
5 Schedule 1 of the table provided in Paragraph (4) of this
6 subsection if the fund [~~equals at least~~] has dropped to less
7 than three and seven-tenths percent and not less than three and
8 four-tenths percent of the total payrolls;

9 [~~(b)~~] (c) the corresponding rate in
10 Schedule 2 of the table provided in Paragraph (4) of this
11 subsection if the fund has dropped to less than three and four-
12 tenths percent [~~and~~] but not less than two and seven-tenths
13 percent of the total payrolls;

14 [~~(e)~~] (d) the corresponding rate in
15 Schedule 3 of the table provided in Paragraph (4) of this
16 subsection if the fund has dropped to less than two and seven-
17 tenths percent and not less than two percent of the total
18 payrolls;

19 [~~(d)~~] (e) the corresponding rate in
20 Schedule 4 of the table provided in Paragraph (4) of this
21 subsection if the fund has dropped to less than two percent and
22 not less than one and one-half percent of the total payrolls;

23 [~~(e)~~] (f) the corresponding rate in
24 Schedule 5 of the table provided in Paragraph (4) of this
25 subsection if the fund has dropped to less than one and one-

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1 half percent and not less than one percent of the total
2 payrolls; or

3 [~~(f)~~] (g) the corresponding rate in
4 Schedule 6 of the table provided in Paragraph (4) of this
5 subsection if the fund has dropped less than one percent of the
6 total payrolls.

7 (3) As used in this section:

8 (a) "annual payroll" means the total
9 amount of remuneration from an employer for employment during a
10 twelve-month period ending on a computation date, and "average
11 payroll" means the average of the last three annual payrolls;

12 (b) "base-period wages" means the wages
13 of an individual for insured work during the individual's base
14 period on the basis of which the individual's benefit rights
15 were determined;

16 (c) "base-period employers" means the
17 employers of an individual during the individual's base period;
18 and

19 (d) "computation date" for each calendar
20 year means the close of business on June 30 of the preceding
21 calendar year.

22 (4) Table of employer reserves and
23 contribution rate schedules:

24 Employer	<u>Contribution</u>	Contribution	Contribution	Contribution
25 Reserve	<u>Schedule 0</u>	Schedule 1	Schedule 2	Schedule 3

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1	10.0% and over	<u>0.03%</u>	0.05%	0.1%	0.6%
2	9.0%-9.9%	<u>0.06%</u>	0.1%	0.2%	0.9%
3	8.0%-8.9%	<u>0.09%</u>	0.2%	0.4%	1.2%
4	7.0%-7.9%	<u>0.10%</u>	0.4%	0.6%	1.5%
5	6.0%-6.9%	<u>0.30%</u>	0.6%	0.8%	1.8%
6	5.0%-5.9%	<u>0.50%</u>	0.8%	1.1%	2.1%
7	4.0%-4.9%	<u>0.80%</u>	1.1%	1.4%	2.4%
8	3.0%-3.9%	<u>1.20%</u>	1.4%	1.7%	2.7%
9	2.0%-2.9%	<u>1.50%</u>	1.7%	2.0%	3.0%
10	1.0%-1.9%	<u>1.80%</u>	2.0%	2.4%	3.3%
11	0.9%-0.0%	<u>2.40%</u>	2.4%	3.3%	3.6%
12	(-0.1%)-(-0.5%)	<u>3.30%</u>	3.3%	3.6%	3.9%
13	(-0.5%)-(-1.0%)	<u>4.20%</u>	4.2%	4.2%	4.2%
14	(-1.0%)-(-2.0%)	<u>5.00%</u>	5.0%	5.0%	5.0%
15	Under (-2.0%)	<u>5.40%</u>	5.4%	5.4%	5.4%
16	Employer	Contribution	Contribution	Contribution	
17	Reserve	Schedule 4	Schedule 5	Schedule 6	
18	10.0% and over	0.9%	1.2%	2.7%	
19	9.0%-9.9%	1.2%	1.5%	2.7%	
20	8.0%-8.9%	1.5%	1.8%	2.7%	
21	7.0%-7.9%	1.8%	2.1%	2.7%	
22	6.0%-6.9%	2.1%	2.4%	2.7%	
23	5.0%-5.9%	2.4%	2.7%	3.0%	
24	4.0%-4.9%	2.7%	3.0%	3.3%	
25	3.0%-3.9%	3.0%	3.3%	3.6%	

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1	2.0%-2.9%	3.3%	3.6%	3.9%
2	1.0%-1.9%	3.6%	3.9%	4.2%
3	0.9%-0.0%	3.9%	4.2%	4.5%
4	(-0.1%)-(-0.5%)	4.2%	4.5%	4.8%
5	(-0.5%)-(-1.0%)	4.5%	4.8%	5.1%
6	(-1.0%)-(-2.0%)	5.0%	5.1%	5.3%
7	Under (-2.0%)	5.4%	5.4%	5.4%.

8 ~~[F.]~~ J. The division shall promptly notify each
9 employer of the employer's rate of contributions as determined
10 for any calendar year pursuant to this section. Such
11 notification shall include the amount determined as the
12 employer's average payroll, the total of all of the employer's
13 contributions paid on the employer's behalf and credited to
14 the employer's account for all past years and total benefits
15 charged to the employer's account for all such years. Such
16 determination shall become conclusive and binding upon the
17 employer unless, within thirty days after the mailing of
18 notice thereof to the employer's last known address or in the
19 absence of mailing, within thirty days after the delivery of
20 such notice, the employer files an application for review and
21 redetermination, setting forth the employer's reason therefor.
22 The employer shall be granted an opportunity for a fair
23 hearing in accordance with rules prescribed by the secretary,
24 but an employer shall not have standing, in any proceeding
25 involving the employer's rate of contributions or contribution

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1 liability, to contest the chargeability to the employer's
2 account of any benefits paid in accordance with a
3 determination, redetermination or decision pursuant to Section
4 51-1-8 NMSA 1978, except upon the ground that the services on
5 the basis of which such benefits were found to be chargeable
6 did not constitute services performed in employment for the
7 employer and only in the event that the employer was not a
8 party to such determination, redetermination or decision, or
9 to any other proceedings under the Unemployment Compensation
10 Law in which the character of such services was determined.
11 The employer shall be promptly notified of the decision on the
12 employer's application for redetermination, which shall become
13 final unless, within fifteen days after the mailing of notice
14 thereof to the employer's last known address or in the absence
15 of mailing, within fifteen days after the delivery of such
16 notice, further appeal is initiated pursuant to Subsection D
17 of Section 51-1-8 NMSA 1978.

18 [~~J.~~] K. The division shall provide each
19 contributing employer, within ninety days of the end of each
20 calendar quarter, a written determination of benefits
21 chargeable to the employer's account. Such determination
22 shall become conclusive and binding upon the employer for all
23 purposes unless, within thirty days after the mailing of the
24 determination to the employer's last known address or in the
25 absence of mailing, within thirty days after the delivery of

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1 such determination, the employer files an application for
2 review and redetermination, setting forth the employer's
3 reason therefor. The employer shall be granted an opportunity
4 for a fair hearing in accordance with rules prescribed by the
5 secretary, but an employer shall not have standing in any
6 proceeding involving the employer's contribution liability to
7 contest the chargeability to the employer's account of any
8 benefits paid in accordance with a determination,
9 redetermination or decision pursuant to Section 51-1-8 NMSA
10 1978, except upon the ground that the services on the basis of
11 which such benefits were found to be chargeable did not
12 constitute services performed in employment for the employer
13 and only in the event that the employer was not a party to
14 such determination, redetermination or decision, or to any
15 other proceedings under the Unemployment Compensation Law in
16 which the character of such services was determined. The
17 employer shall be promptly notified of the decision on the
18 employer's application for redetermination, which shall become
19 final unless, within fifteen days after the mailing of notice
20 thereof to the employer's last known address or in the absence
21 of mailing, within fifteen days after the delivery of such
22 notice, further appeal is initiated pursuant to Subsection D
23 of Section 51-1-8 NMSA 1978.

24 ~~[K.]~~ L. The contributions, together with interest
25 and penalties thereon imposed by the Unemployment Compensation

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1 Law, shall not be assessed nor shall action to collect the
2 same be commenced more than four years after a report showing
3 the amount of the contributions was due. In the case of a
4 false or fraudulent contribution report with intent to evade
5 contributions or a willful failure to file a report of all
6 contributions due, the contributions, together with interest
7 and penalties thereon, may be assessed or an action to collect
8 such contributions may be begun at any time. Before the
9 expiration of such period of limitation, the employer and the
10 secretary may agree in writing to an extension thereof and the
11 period so agreed on may be extended by subsequent agreements
12 in writing. In any case where the assessment has been made
13 and action to collect has been commenced within four years of
14 the due date of any contribution, interest or penalty,
15 including the filing of a warrant of lien by the secretary
16 pursuant to Section 51-1-36 NMSA 1978, such action shall not
17 be subject to any period of limitation.

18 ~~[E.]~~ M. The secretary shall correct any error in
19 the determination of an employer's rate of contribution during
20 the calendar year to which the erroneous rate applies,
21 notwithstanding that notification of the employer's rate of
22 contribution may have been issued and contributions paid
23 pursuant to the notification. Upon issuance by the division
24 of a corrected rate of contribution, the employer shall have
25 the same rights to review and redetermination as provided in

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1 Subsection [~~F~~] J of this section.

2 [~~M.~~] N. Any interest required to be paid on
3 advances to this state's unemployment compensation fund under
4 Title 12 of the Social Security Act shall be paid in a timely
5 manner as required under Section 1202 of Title 12 of the
6 Social Security Act and shall not be paid, directly or
7 indirectly, by the state from amounts in the state's
8 unemployment compensation fund."

9 Section 5. Section 51-1-42 NMSA 1978 (being Laws 2003,
10 Chapter 47, Section 12) is amended to read:

11 "51-1-42. DEFINITIONS.--As used in the Unemployment
12 Compensation Law:

13 A. "base period" means the first four of the last
14 five completed calendar quarters immediately preceding the
15 first day of an individual's benefit year, except that "base
16 period" means for benefit years beginning on or after January
17 1, 2005 for an individual who does not have sufficient wages
18 in the base period as defined to qualify for benefits pursuant
19 to Section 51-1-5 NMSA 1978, the individual's base period
20 shall be the last four completed calendar quarters immediately
21 preceding the first day of the individual's benefit year if
22 that period qualifies the individual for benefits pursuant to
23 Section 51-1-5 NMSA 1978; provided that:

24 (1) wages that fall within the base period
25 of claims established pursuant to this subsection are not

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1 available for reuse in qualifying for a subsequent benefit
2 year; and

3 (2) in the case of a combined-wage claim
4 pursuant to the arrangement approved by the federal secretary
5 of labor, the base period is that base period applicable under
6 the unemployment compensation law of the paying state;

7 B. "benefits" means the cash unemployment
8 compensation payments payable to an eligible individual
9 pursuant to Section 51-1-4 NMSA 1978 with respect to the
10 individual's weeks of unemployment;

11 C. "contributions" means the money payments
12 required by Section 51-1-9 NMSA 1978 to be made into the fund
13 by an employer on account of having individuals performing
14 services for the employer;

15 D. "employing unit" means any individual or type
16 of organization, including any partnership, association,
17 cooperative, trust, estate, joint-stock company, agricultural
18 enterprise, insurance company or corporation, whether domestic
19 or foreign, or the receiver, trustee in bankruptcy, trustee or
20 successor thereof, household, fraternity or club, the legal
21 representative of a deceased person or any state or local
22 government entity to the extent required by law to be covered
23 as an employer, which has in its employ one or more
24 individuals performing services for it within this state. An
25 individual performing services for an employing unit that

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1 maintains two or more separate establishments within this
2 state shall be deemed to be employed by a single employing
3 unit for all the purposes of the Unemployment Compensation
4 Law. An individual performing services for a contractor,
5 subcontractor or agent that is performing work or services for
6 an employing unit, as described in this subsection, which is
7 within the scope of the employing unit's usual trade,
8 occupation, profession or business, shall be deemed to be in
9 the employ of the employing unit for all purposes of the
10 Unemployment Compensation Law unless the contractor,
11 subcontractor or agent is itself an employer within the
12 provisions of Subsection E of this section;

13 E. "employer" includes:

14 (1) an employing unit that:

15 (a) unless otherwise provided in this
16 section, paid for service in employment as defined in
17 Subsection F of this section wages of four hundred fifty
18 dollars (\$450) or more in any calendar quarter in either the
19 current or preceding calendar year or had in employment, as
20 defined in Subsection F of this section, for some portion of a
21 day in each of twenty different calendar weeks during either
22 the current or the preceding calendar year, and irrespective
23 of whether the same individual was in employment in each such
24 day, at least one individual;

25 (b) for the purposes of Subparagraph

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1 (a) of this paragraph, if any week includes both December 31
2 and January 1, the days of that week up to January 1 shall be
3 deemed one calendar week and the days beginning January 1,
4 another such week; and

5 (c) for purposes of defining an
6 "employer" under Subparagraph (a) of this paragraph, the wages
7 or remuneration paid to individuals performing services in
8 employment in agricultural labor or domestic services as
9 provided in Paragraphs (6) and (7) of Subsection F of this
10 section shall not be taken into account; except that any
11 employing unit determined to be an employer of agricultural
12 labor under Paragraph (6) of Subsection F of this section
13 shall be an employer under Subparagraph (a) of this paragraph
14 so long as the employing unit is paying wages or remuneration
15 for services other than agricultural services;

16 (2) any individual or type of organization
17 that acquired the trade or business or substantially all of
18 the assets thereof, of an employing unit that at the time of
19 the acquisition was an employer subject to the Unemployment
20 Compensation Law; provided that where such an acquisition
21 takes place, the secretary may postpone activating the
22 separate account pursuant to Subsection A of Section 51-1-11
23 NMSA 1978 until such time as the successor employer has
24 employment as defined in Subsection F of this section;

25 (3) an employing unit that acquired all or

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1 part of the organization, trade, business or assets of another
2 employing unit and that, if treated as a single unit with the
3 other employing unit or part thereof, would be an employer
4 under Paragraph (1) of this subsection;

5 (4) an employing unit not an employer by
6 reason of any other paragraph of this subsection:

7 (a) for which, within either the
8 current or preceding calendar year, service is or was
9 performed with respect to which such employing unit is liable
10 for any federal tax against which credit may be taken for
11 contributions required to be paid into a state unemployment
12 fund; or

13 (b) that, as a condition for approval
14 of the Unemployment Compensation Law for full tax credit
15 against the tax imposed by the Federal Unemployment Tax Act,
16 is required, pursuant to that act, to be an "employer" under
17 the Unemployment Compensation Law;

18 (5) an employing unit that, having become an
19 employer under Paragraph (1), (2), (3) or (4) of this
20 subsection, has not, under Section 51-1-18 NMSA 1978, ceased
21 to be an employer subject to the Unemployment Compensation
22 Law;

23 (6) for the effective period of its election
24 pursuant to Section 51-1-18 NMSA 1978, any other employing
25 unit that has elected to become fully subject to the

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1 Unemployment Compensation Law;

2 (7) an employing unit for which any services
3 performed in its employ are deemed to be performed in this
4 state pursuant to an election under an arrangement entered
5 into in accordance with Subsection A of Section 51-1-50 NMSA
6 1978; and

7 (8) an Indian tribe as defined in 26 USCA
8 Section 3306(u) for which service in employment is performed;

9 F. "employment":

10 (1) means any service, including service in
11 interstate commerce, performed for wages or under any contract
12 of hire, written or oral, express or implied;

13 (2) means an individual's entire service,
14 performed within or both within and without this state if:

15 (a) the service is primarily localized
16 in this state with services performed outside the state being
17 only incidental thereto; or

18 (b) the service is not localized in any
19 state but some of the service is performed in this state and:

20 1) the base of operations or, if there is no base of
21 operations, the place from which such service is directed or
22 controlled, is in this state; or 2) the base of operations or
23 place from which such service is directed or controlled is not
24 in any state in which some part of the service is performed
25 but the individual's residence is in this state;

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1 (3) means services performed within this
2 state but not covered under Paragraph (2) of this subsection
3 if contributions or payments in lieu of contributions are not
4 required and paid with respect to such services under an
5 unemployment compensation law of any other state, the federal
6 government or Canada;

7 (4) means services covered by an election
8 pursuant to Section 51-1-18 NMSA 1978 and services covered by
9 an election duly approved by the secretary in accordance with
10 an arrangement pursuant to Paragraph (1) of Subsection A of
11 Section 51-1-50 NMSA 1978 shall be deemed to be employment
12 during the effective period of the election;

13 (5) means services performed by an
14 individual for an employer for wages or other remuneration
15 unless and until it is established by a preponderance of
16 evidence that:

17 (a) the individual has been and will
18 continue to be free from control or direction over the
19 performance of the services both under the individual's
20 contract of service and in fact;

21 (b) the service is either outside the
22 usual course of business for which the service is performed or
23 that such service is performed outside of all the places of
24 business of the enterprise for which such service is
25 performed; and

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1 (c) the individual is customarily
2 engaged in an independently established trade, occupation,
3 profession or business of the same nature as that involved in
4 the contract of service;

5 (6) means service performed after December
6 31, 1977 by an individual in agricultural labor as defined in
7 Subsection Q of this section if:

8 (a) the service is performed for an
9 employing unit that: 1) paid remuneration in cash of twenty
10 thousand dollars (\$20,000) or more to individuals in that
11 employment during any calendar quarter in either the current
12 or the preceding calendar year; or 2) employed in agricultural
13 labor ten or more individuals for some portion of a day in
14 each of twenty different calendar weeks in either the current
15 or preceding calendar year, whether or not the weeks were
16 consecutive, and regardless of whether the individuals were
17 employed at the same time;

18 (b) the service is not performed before
19 January 1, 1980 by an individual who is an alien admitted to
20 the United States to perform service in agricultural labor
21 pursuant to Sections 214(c) and 101(15)(H) of the federal
22 Immigration and Nationality Act; and

23 (c) for purposes of this paragraph, an
24 individual who is a member of a crew furnished by a crew
25 leader to perform service in agricultural labor for a farm

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1 operator or other person shall be treated as an employee of
2 the crew leader: 1) if the crew leader meets the requirements
3 of a crew leader as defined in Subsection L of this section;
4 or 2) substantially all the members of the crew operate or
5 maintain mechanized agricultural equipment that is provided by
6 the crew leader; and 3) the individuals performing the
7 services are not, by written agreement or in fact, within the
8 meaning of Paragraph (5) of this subsection, performing
9 services in employment for the farm operator or other person;

10 (7) means service performed after December
11 31, 1977 by an individual in domestic service in a private
12 home, local college club or local chapter of a college
13 fraternity or sorority for a person or organization that paid
14 cash remuneration of one thousand dollars (\$1,000) in any
15 calendar quarter in the current or preceding calendar year to
16 individuals performing such services;

17 (8) means service performed after December
18 31, 1971 by an individual in the employ of a religious,
19 charitable, educational or other organization but only if the
20 following conditions are met:

21 (a) the service is excluded from
22 "employment" as defined in the Federal Unemployment Tax Act
23 solely by reason of Section 3306(c)(8) of that act; and

24 (b) the organization meets the
25 requirements of "employer" as provided in Subparagraph (a) of

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1 Paragraph (1) of Subsection E of this section;

2 (9) means service of an individual who is a
3 citizen of the United States, performed outside the United
4 States, except in Canada, after December 31, 1971 in the
5 employ of an American employer, other than service that is
6 deemed "employment" under the provisions of Paragraph (2) of
7 this subsection or the parallel provisions of another state's
8 law, if:

9 (a) the employer's principal place of
10 business in the United States is located in this state;

11 (b) the employer has no place of
12 business in the United States, but: 1) the employer is an
13 individual who is a resident of this state; 2) the employer is
14 a corporation organized under the laws of this state; or 3)
15 the employer is a partnership or a trust and the number of the
16 partners or trustees who are residents of this state is
17 greater than the number who are residents of any one other
18 state; or

19 (c) none of the criteria of
20 Subparagraphs (a) and (b) of this paragraph are met, but the
21 employer has elected coverage in this state or, the employer
22 having failed to elect coverage in any state, the individual
23 has filed a claim for benefits, based on such service, under
24 the law of this state.

25 "American employer" for the purposes of this paragraph

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1 means a person who is: 1) an individual who is a resident of
2 the United States; 2) a partnership if two-thirds or more of
3 the partners are residents of the United States; 3) a trust if
4 all of the trustees are residents of the United States; or 4)
5 a corporation organized under the laws of the United States or
6 of any state. For the purposes of this paragraph, "United
7 States" includes the United States, the District of Columbia,
8 the commonwealth of Puerto Rico and the Virgin Islands;

9 (10) means, notwithstanding any other
10 provisions of this subsection, service with respect to which a
11 tax is required to be paid under any federal law imposing a
12 tax against which credit may be taken for contributions
13 required to be paid into a state unemployment fund or which as
14 a condition for full tax credit against the tax imposed by the
15 Federal Unemployment Tax Act is required to be covered under
16 the Unemployment Compensation Law;

17 (11) means service performed in the employ
18 of an Indian tribe if:

19 (a) the service is excluded from
20 "employment" as defined in 26 USCA Section 3306(c) solely by
21 reason of 26 USCA Section 3306(c)(7); and

22 (b) the service is not otherwise
23 excluded from employment pursuant to the Unemployment
24 Compensation Law;

25 (12) does not include:

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1 (a) service performed in the employ of:
2 1) a church or convention or association of churches; or 2) an
3 organization that is operated primarily for religious purposes
4 and that is operated, supervised, controlled or principally
5 supported by a church or convention or association of
6 churches;

7 (b) service performed by a duly
8 ordained, commissioned or licensed minister of a church in the
9 exercise of his ministry or by a member of a religious order
10 in the exercise of duties required by such order;

11 (c) service performed by an individual
12 in the employ of his son, daughter or spouse, and service
13 performed by a child under the age of majority in the employ
14 of his father or mother;

15 (d) service performed in the employ of
16 the United States government or an instrumentality of the
17 United States immune under the constitution of the United
18 States from the contributions imposed by the Unemployment
19 Compensation Law except that to the extent that the congress
20 of the United States shall permit states to require any
21 instrumentalities of the United States to make payments into
22 an unemployment fund under a state unemployment compensation
23 act, all of the provisions of the Unemployment Compensation
24 Law shall be applicable to such instrumentalities, and to
25 service performed for such instrumentalities in the same

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1 manner, to the same extent and on the same terms as to all
2 other employers, employing units, individuals and services;
3 provided that if this state shall not be certified for any
4 year by the secretary of labor of the United States under
5 Section 3304 of the federal Internal Revenue Code of 1986,
6 26 U.S.C. Section 3304, the payments required of such
7 instrumentalities with respect to such year shall be refunded
8 by the department from the fund in the same manner and within
9 the same period as is provided in Subsection D of Section
10 51-1-36 NMSA 1978 with respect to contributions erroneously
11 collected;

12 (e) service performed in a facility
13 conducted for the purpose of carrying out a program of
14 rehabilitation for individuals whose earning capacity is
15 impaired by age or physical or mental deficiency or injury or
16 providing remunerative work for individuals who because of
17 their impaired physical or mental capacity cannot be readily
18 absorbed in the competitive labor market, by an individual
19 receiving that rehabilitation or remunerative work;

20 (f) service with respect to which
21 unemployment compensation is payable under an unemployment
22 compensation system established by an act of congress;

23 (g) service performed in the employ of
24 a foreign government, including service as a consular or other
25 officer or employee or a nondiplomatic representative;

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1 (h) service performed by an individual
2 for a person as an insurance agent or as an insurance
3 solicitor, if all such service performed by the individual for
4 the person is performed for remuneration solely by way of
5 commission;

6 (i) service performed by an individual
7 under the age of eighteen in the delivery or distribution of
8 newspapers or shopping news, not including delivery or
9 distribution to any point for subsequent delivery or
10 distribution;

11 (j) service covered by an election duly
12 approved by the agency charged with the administration of any
13 other state or federal unemployment compensation law, in
14 accordance with an arrangement pursuant to Paragraph (l) of
15 Subsection A of Section 51-1-50 NMSA 1978 during the effective
16 period of the election;

17 (k) service performed, as part of an
18 unemployment work-relief or work-training program assisted or
19 financed in whole or part by any federal agency or an agency
20 of a state or political subdivision thereof, by an individual
21 receiving the work relief or work training;

22 (l) service performed by an individual
23 who is enrolled at a nonprofit or public educational
24 institution that normally maintains a regular faculty and
25 curriculum and normally has a regularly organized body of

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1 students in attendance at the place where its educational
2 activities are carried on as a student in a full-time program,
3 taken for credit at the institution that combines academic
4 instruction with work experience, if the service is an
5 integral part of such program and the institution has so
6 certified to the employer, except that this subparagraph shall
7 not apply to service performed in a program established for or
8 on behalf of an employer or group of employers;

9 (m) service performed in the employ of
10 a hospital, if the service is performed by a patient of the
11 hospital, or services performed by an inmate of a custodial or
12 penal institution for any employer;

13 (n) service performed by real estate
14 salesmen for others when the services are performed for
15 remuneration solely by way of commission;

16 (o) service performed in the employ of
17 a school, college or university if the service is performed by
18 a student who is enrolled and is regularly attending classes
19 at the school, college or university;

20 (p) service performed by an individual
21 for a fixed or contract fee officiating at a sporting event
22 that is conducted by or under the auspices of a nonprofit or
23 governmental entity if that person is not otherwise an
24 employee of the entity conducting the sporting event;

25 (q) service performed for a private,

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1 for-profit person or entity by an individual as a product
2 demonstrator or product merchandiser if the service is
3 performed pursuant to a written contract between that
4 individual and a person or entity whose principal business is
5 obtaining the services of product demonstrators and product
6 merchandisers for third parties, for demonstration and
7 merchandising purposes and the individual: 1) is compensated
8 for each job or the compensation is based on factors related
9 to the work performed; 2) provides the equipment used to
10 perform the service, unless special equipment is required and
11 provided by the manufacturer through an agency; 3) is
12 responsible for completion of a specific job and for any
13 failure to complete the job; 4) pays all expenses, and the
14 opportunity for profit or loss rests solely with the
15 individual; and 5) is responsible for operating costs, fuel,
16 repairs and motor vehicle insurance. For the purpose of this
17 subparagraph, "product demonstrator" means an individual who,
18 on a temporary, part-time basis, demonstrates or gives away
19 samples of a food or other product as part of an advertising
20 or sales promotion for the product and who is not otherwise
21 employed directly by the manufacturer, distributor or
22 retailer, and "product merchandiser" means an individual who,
23 on a temporary, part-time basis builds or resets a product
24 display and who is not otherwise directly employed by the
25 manufacturer, distributor or retailer; or

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1 (r) service performed for a private,
2 for-profit person or entity by an individual as a landman if
3 substantially all remuneration paid in cash or otherwise for
4 the performance of the services is directly related to the
5 completion by the individual of the specific tasks contracted
6 for rather than to the number of hours worked by the
7 individual. For the purposes of this subparagraph, "landman"
8 means a land professional who has been engaged primarily in:
9 1) negotiating for the acquisition or divestiture of mineral
10 rights; 2) negotiating business agreements that provide for
11 the exploration for or development of minerals; 3) determining
12 ownership of minerals through the research of public and
13 private records; and 4) reviewing the status of title, curing
14 title defects and otherwise reducing title risk associated
15 with ownership of minerals; managing rights or obligations
16 derived from ownership of interests and minerals; or utilizing
17 or pooling of interest in minerals; and

18 (13) for the purposes of this subsection, if
19 the services performed during one-half or more of any pay
20 period by an individual for the person employing the
21 individual constitute employment, all the services of the
22 individual for the period shall be deemed to be employment
23 but, if the services performed during more than one-half of
24 any such pay period by an individual for the person employing
25 the individual do not constitute employment, then none of the

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1 services of the individual for the period shall be deemed to
2 be employment. As used in this paragraph, the term "pay
3 period" means a period, of not more than thirty-one
4 consecutive days, for which a payment of remuneration is
5 ordinarily made to the individual by the person employing the
6 individual. This paragraph shall not be applicable with
7 respect to services performed in a pay period by an individual
8 for the person employing the individual where any of such
9 service is excepted by Subparagraph (f) of Paragraph (12) of
10 this subsection;

11 G. "employment office" means a free public
12 employment office, or branch thereof, operated by this state
13 or maintained as a part of a state-controlled system of public
14 employment offices;

15 H. "fund" means the unemployment compensation fund
16 established by the Unemployment Compensation Law to which all
17 contributions and payments in lieu of contributions required
18 under the Unemployment Compensation Law and from which all
19 benefits provided under the Unemployment Compensation Law
20 shall be paid;

21 I. "unemployment" means, with respect to an
22 individual, any week during which the individual performs no
23 services and with respect to which no wages are payable to the
24 individual and during which the individual is not engaged in
25 self-employment or receives an award of back pay for loss of

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1 employment. The secretary shall prescribe by rule what
2 constitutes part-time and intermittent employment, partial
3 employment and the conditions under which individuals engaged
4 in such employment are eligible for partial unemployment
5 benefits, but no individual who is otherwise eligible shall be
6 deemed ineligible for benefits solely for the reason that the
7 individual seeks, applies for or accepts only part-time work,
8 instead of full-time work, if the part-time work is for at
9 least twenty hours per week;

10 J. "state", when used in reference to any state
11 other than New Mexico, includes, in addition to the states of
12 the United States, the District of Columbia, the commonwealth
13 of Puerto Rico and the Virgin Islands;

14 K. "unemployment compensation administration fund"
15 means the fund established by Subsection A of Section 51-1-34
16 NMSA 1978 from which administrative expenses under the
17 Unemployment Compensation Law shall be paid. "Employment
18 security department fund" means the fund established by
19 Subsection B of Section 51-1-34 NMSA 1978 from which certain
20 administrative expenses under the Unemployment Compensation
21 Law shall be paid;

22 L. "crew leader" means a person who:

23 (1) holds a valid certificate of
24 registration as a crew leader or farm labor contractor under
25 the federal Migrant and Seasonal Agricultural Worker

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1 Protection Act;

2 (2) furnishes individuals to perform
3 services in agricultural labor for any other person;

4 (3) pays, either on the crew leader's own
5 behalf or on behalf of such other person, the individuals so
6 furnished by the crew leader for service in agricultural
7 labor; and

8 (4) has not entered into a written agreement
9 with the other person for whom the crew leader furnishes
10 individuals in agricultural labor that the individuals will be
11 the employees of the other person;

12 M. "week" means such period of seven consecutive
13 days, as the secretary may by rule prescribe. The secretary
14 may by rule prescribe that a week shall be deemed to be "in",
15 "within" or "during" the benefit year that includes the
16 greater part of such week;

17 N. "calendar quarter" means the period of three
18 consecutive calendar months ending on March 31, June 30,
19 September 30 or December 31;

20 O. "insured work" means services performed for
21 employers who are covered under the Unemployment Compensation
22 Law;

23 P. "benefit year" with respect to an individual
24 means the one-year period beginning with the first day of the
25 first week of unemployment with respect to which the

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1 individual first files a claim for benefits in accordance with
2 Subsection A of Section 51-1-8 NMSA 1978 and thereafter the
3 one-year period beginning with the first day of the first week
4 of unemployment with respect to which the individual next
5 files such a claim for benefits after the termination of the
6 individual's last preceding benefit year; provided that at the
7 time of filing such a claim the individual has been paid the
8 wage required under Paragraph (5) of Subsection A of Section
9 51-1-5 NMSA 1978;

10 Q. "agricultural labor" includes all services
11 performed:

12 (1) on a farm, in the employ of a person, in
13 connection with cultivating the soil or in connection with
14 raising or harvesting an agricultural or horticultural
15 commodity, including the raising, shearing, feeding, caring
16 for, training and management of livestock, bees, poultry and
17 fur-bearing animals and wildlife;

18 (2) in the employ of the owner or tenant or
19 other operator of a farm, in connection with the operation,
20 management, conservation or maintenance of the farm and its
21 tools and equipment, if the major part of the service is
22 performed on a farm;

23 (3) in connection with the operation or
24 maintenance of ditches, canals, reservoirs or waterways used
25 exclusively for supplying and storing water for farming

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1 purposes when such ditches, canals, reservoirs or waterways
2 are owned and operated by the farmers using the water stored
3 or carried therein; and

4 (4) in handling, planting, drying, packing,
5 packaging, processing, freezing, grading, storing or delivery
6 to storage or to market or to a carrier for transportation to
7 market any agricultural or horticultural commodity but only if
8 the service is performed as an incident to ordinary farming
9 operations. The provisions of this paragraph shall not be
10 deemed to be applicable with respect to service performed in
11 connection with commercial canning or commercial freezing or
12 in connection with any agricultural or horticultural commodity
13 after its delivery to a terminal market for distribution for
14 consumption.

15 As used in this subsection, the term "farm" includes
16 stock, dairy, poultry, fruit, fur-bearing animal and truck
17 farms, plantations, ranches, nurseries, greenhouses, ranges
18 and orchards;

19 R. "payments in lieu of contributions" means the
20 money payments made into the fund by an employer pursuant to
21 the provisions of Subsection B of Section 51-1-13 NMSA 1978 or
22 Subsection E of Section 51-1-59 NMSA 1978;

23 S. "department" means the labor department; and

24 T. "wages" means all remuneration for services,
25 including commissions and bonuses and the cash value of all

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1 remuneration in any medium other than cash. The reasonable
2 cash value of remuneration in any medium other than cash shall
3 be established and determined in accordance with rules
4 prescribed by the secretary; provided that the term "wages"
5 shall not include:

6 (1) subsequent to December 31, 1977, that
7 part of the remuneration in excess of the base wage as
8 determined by the secretary for each calendar year. The base
9 wage upon which contribution shall be paid during any calendar
10 year shall be sixty percent of the state's average annual
11 earnings computed by the division by dividing total wages
12 reported to the division by contributing employers for the
13 second preceding calendar year before the calendar year the
14 computed base wage becomes effective by the average annual
15 employment reported by contributing employers for the same
16 period rounded to the next higher multiple of one hundred
17 dollars (\$100); provided that the base wage so computed for
18 any calendar year shall not be less than seven thousand
19 dollars (\$7,000). Wages paid by an employer to an individual
20 in his employ during any calendar year in excess of the base
21 wage in effect for that calendar year shall be reported to the
22 department but shall be exempt from the payment of
23 contributions unless such wages paid in excess of the base
24 wage become subject to tax under a federal law imposing a tax
25 against which credit may be taken for contributions required

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1 to be paid into a state unemployment fund;

2 (2) the amount of any payment with respect
3 to services performed after June 30, 1941 to or on behalf of
4 an individual in the employ of an employing unit under a plan
5 or system established by the employing unit that makes
6 provision for individuals in its employ generally or for a
7 class or classes of individuals, including any amount paid by
8 an employing unit for insurance or annuities, or into a fund,
9 to provide for any payment, on account of:

10 (a) retirement if the payments are made
11 by an employer to or on behalf of an employee under a
12 simplified employee pension plan that provides for payments by
13 an employer in addition to the salary or other remuneration
14 normally payable to the employee or class of employees and
15 does not include any payments that represent deferred
16 compensation or other reduction of an employee's normal
17 taxable wages or remuneration or any payments made to a third
18 party on behalf of an employee as part of an agreement of
19 deferred remuneration;

20 (b) sickness or accident disability if
21 the payments are received under a workers' compensation or
22 occupational disease disablement law;

23 (c) medical and hospitalization
24 expenses in connection with sickness or accident disability;
25 or

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1 (d) death; provided the individual in
2 its employ has not the option to receive, instead of provision
3 for the death benefit, any part of such payment, or, if such
4 death benefit is insured, any part of the premiums or
5 contributions to premiums paid by the individual's employing
6 unit and has not the right under the provisions of the plan or
7 system or policy of insurance providing for the death benefit
8 to assign the benefit, or to receive a cash consideration in
9 lieu of the benefit either upon the individual's withdrawal
10 from the plan or system providing for the benefit or upon
11 termination of the plan or system or policy of insurance or of
12 the individual's service with the employing unit;

13 (3) remuneration for agricultural labor paid
14 in any medium other than cash;

15 (4) a payment made to, or on behalf of, an
16 employee or an employee's beneficiary under a cafeteria plan
17 within the meaning of Section 125 of the federal Internal
18 Revenue Code of 1986;

19 (5) a payment made, or benefit furnished to
20 or for the benefit of an employee if at the time of the
21 payment or such furnishing it is reasonable to believe that
22 the employee will be able to exclude the payment or benefit
23 from income under Section 129 of the federal Internal Revenue
24 Code of 1986;

25 (6) a payment made by an employer to a

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1 survivor or the estate of a former employee after the calendar
2 year in which the employee died;

3 (7) a payment made to, or on behalf of, an
4 employee or the employee's beneficiary under an arrangement to
5 which Section 408(p) of the federal Internal Revenue Code of
6 1986 applies, other than any elective contributions under
7 Paragraph (2)(A)(i) of that section;

8 (8) a payment made to or for the benefit of
9 an employee if at the time of the payment it is reasonable to
10 believe that the employee will be able to exclude the payment
11 from income under Section 106 of the federal Internal Revenue
12 Code of 1986; or

13 (9) the value of any meals or lodging
14 furnished by or on behalf of the employer if at the time the
15 benefit is provided it is reasonable to believe that the
16 employee will be able to exclude such items from income under
17 Section 119 of the federal Internal Revenue Code of 1986."

18 Section 6. Section 51-1-4 NMSA 1978 (being Laws 2003,
19 Chapter 47, Section 8, as amended by Section 1 of this act) is
20 repealed and a new Section 51-1-4 NMSA 1978 is enacted to
21 read:

22 "51-1-4. [NEW MATERIAL] MONETARY COMPUTATION OF
23 BENEFITS--PAYMENT GENERALLY.--

24 A. All benefits provided herein are payable from
25 the unemployment compensation fund. All benefits shall be

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1 paid in accordance with rules prescribed by the secretary
2 through employment offices or other agencies as the secretary
3 approves by general rule.

4 B. Weekly benefits shall be as follows:

5 (1) an individual's "weekly benefit amount"
6 is an amount equal to one twenty-sixth of the total wages for
7 insured work paid to the individual in that quarter of the
8 individual's base period in which total wages were highest.
9 No benefit as so computed may be less than ten percent or more
10 than fifty-two and one-half percent of the state's average
11 weekly wage for all insured work. The state's average weekly
12 wage shall be computed from all wages reported to the
13 department from employing units in accordance with rules of
14 the secretary for the period ending June 30 of each calendar
15 year divided by the total number of covered employees divided
16 by fifty-two, effective for the benefit years commencing on or
17 after the first Sunday of the following calendar year. An
18 individual is not eligible to receive benefits unless the
19 individual has wages in at least two quarters of that
20 individual's base period. For the purposes of this
21 subsection, "total wages" means all remuneration for insured
22 work, including commissions and bonuses and the cash value of
23 all remuneration in a medium other than cash;

24 (2) an eligible individual who is unemployed
25 in any week during which the individual is in a continued

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1 claims status shall be paid, with respect to the week, a
2 benefit in an amount equal to the individual's weekly benefit
3 amount, less that part of the wages, if any, or earnings from
4 self-employment, payable to the individual with respect to
5 such week that is in excess of one-fifth of the individual's
6 weekly benefit amount. For purposes of this subsection only,
7 "wages" includes all remuneration for services actually
8 performed in a week for which benefits are claimed, vacation
9 pay for a period for which the individual has a definite
10 return-to-work date, wages in lieu of notice and back pay for
11 loss of employment but does not include payments through a
12 court for time spent in jury service;

13 (3) notwithstanding any other provision of
14 this section, an eligible individual who, pursuant to a plan
15 financed in whole or in part by a base-period employer of the
16 individual, is receiving a governmental or other pension,
17 retirement pay, annuity or any other similar periodic payment
18 that is based on the previous work of the individual and who
19 is unemployed with respect to any week ending subsequent to
20 April 9, 1981 shall be paid with respect to the week, in
21 accordance with rules prescribed by the secretary,
22 compensation equal to the individual's weekly benefit amount
23 reduced, but not below zero, by the prorated amount of the
24 pension, retirement pay, annuity or other similar periodic
25 payment that exceeds the percentage contributed to the plan by

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1 the eligible individual. The maximum benefit amount payable
2 to the eligible individual shall be an amount not more than
3 twenty-six times his reduced weekly benefit amount. If
4 payments referred to in this section are being received by an
5 individual under the federal Social Security Act, the division
6 shall take into account the individual's contribution and make
7 no reduction in the weekly benefit amount;

8 (4) in the case of a lump-sum payment of a
9 pension, retirement or retired pay, annuity or other similar
10 payment by a base-period employer that is based on the
11 previous work of the individual, the payment shall be
12 allocated, in accordance with rules prescribed by the
13 secretary, and shall reduce the amount of unemployment
14 compensation paid, but not below zero, in accordance with
15 Paragraph (3) of this subsection; and

16 (5) the retroactive payment of a pension,
17 retirement or retired pay, annuity or any other similar
18 periodic payment as provided in Paragraphs (3) and (4) of this
19 subsection attributable to weeks during which an individual
20 has claimed or has been paid unemployment compensation shall
21 be allocated to those weeks and shall reduce the amount of
22 unemployment compensation for those weeks, but not below zero,
23 by an amount equal to the prorated amount of the pension. Any
24 overpayment of unemployment compensation benefits resulting
25 from the application of the provisions of this paragraph shall

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1 be recovered from the claimant in accordance with the
2 provisions of Section 51-1-38 NMSA 1978.

3 C. An otherwise eligible individual is entitled
4 during any benefit year to a total amount of benefits equal to
5 whichever is the lesser of twenty-six times the individual's
6 weekly benefit amount or sixty percent of the individual's
7 wages for insured work paid during the individual's base
8 period.

9 D. A benefit as determined in Subsection B or C of
10 this section, if not a multiple of one dollar (\$1.00), shall
11 be rounded to the next lower multiple of one dollar (\$1.00).

12 E. The secretary may prescribe rules to provide
13 for the payment of benefits that are due and payable to the
14 legal representative, dependents, relatives or next of kin of
15 claimants since deceased. These rules need not conform with
16 the laws governing successions, and the payment shall be
17 deemed a valid payment to the same extent as if made under a
18 formal administration of the succession of the claimant.

19 F. The division, on its own initiative, may
20 reconsider a monetary determination whenever it is determined
21 that an error in computation or identity has occurred or that
22 wages of the claimant pertinent to such determination but not
23 considered have been newly discovered or that the benefits
24 have been allowed or denied on the basis of misrepresentation
25 of fact, but no redetermination shall be made after one year

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1 from the date of the original monetary determination. Notice
2 of a redetermination shall be given to all interested parties
3 and shall be subject to an appeal in the same manner as the
4 original determination. In the event that an appeal involving
5 an original monetary determination is pending at the time a
6 redetermination is issued, the appeal, unless withdrawn, shall
7 be treated as an appeal from redetermination."

8 Section 7. Section 51-1-5 NMSA 1978 (being Laws 2003,
9 Chapter 47, Section 9, as amended by Section 2 of this act) is
10 repealed and a new Section 51-1-5 NMSA 1978 is enacted to
11 read:

12 "51-1-5. [NEW MATERIAL] BENEFIT ELIGIBILITY
13 CONDITIONS.--

14 A. An unemployed individual shall be eligible to
15 receive benefits with respect to any week only if the
16 individual:

17 (1) has made a claim for benefits with
18 respect to such week in accordance with such rules as the
19 secretary may prescribe;

20 (2) has registered for work at, and
21 thereafter continued to report at, an employment office in
22 accordance with such rules as the secretary may prescribe,
23 except that the secretary may, by rule, waive or alter either
24 or both of the requirements of this paragraph as to
25 individuals attached to regular jobs and as to such other

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1 types of cases or situations with respect to which the
2 secretary finds that compliance with such requirements would
3 be oppressive or would be inconsistent with the purposes of
4 the Unemployment Compensation Law. No such rule shall
5 conflict with Subsection A of Section 51-1-4 NMSA 1978;

6 (3) is able to work and is available for
7 work and is actively seeking permanent and substantially
8 full-time work in accordance with the terms, conditions and
9 hours common in the occupation or business in which the
10 individual is seeking work, except that the secretary may, by
11 rule, waive this requirement for individuals who are on
12 temporary layoff status from their regular employment with an
13 assurance from their employers that the layoff shall not
14 exceed four weeks or who have an express offer in writing of
15 substantially full-time work that will begin within a period
16 not exceeding four weeks;

17 (4) has been unemployed for a waiting period
18 of one week. A week shall not be counted as a week of
19 unemployment for the purposes of this paragraph:

20 (a) unless it occurs within the benefit
21 year that includes the week with respect to which the
22 individual claims payment of benefits;

23 (b) if benefits have been paid with
24 respect thereto; and

25 (c) unless the individual was eligible

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1 for benefits with respect thereto as provided in this section
2 and Section 51-1-7 NMSA 1978, except for the requirements of
3 this subsection and of Subsection D of Section 51-1-7 NMSA
4 1978;

5 (5) has been paid wages in at least two
6 quarters of the individual's base period;

7 (6) has reported to an office of the
8 division in accordance with the rules of the secretary for the
9 purpose of an examination and review of the individual's
10 availability for and search for work, for employment
11 counseling, referral and placement and for participation in a
12 job finding or employability training and development program.
13 An individual shall not be denied benefits under this section
14 for any week that the individual is participating in a job
15 finding or employability training and development program; and

16 (7) participates in reemployment services,
17 such as job search assistance services, if the division
18 determines that the individual is likely to exhaust regular
19 benefits and need reemployment services pursuant to a
20 profiling system established by the division, unless the
21 division determines that:

22 (a) the individual has completed such
23 services; or

24 (b) there is justifiable cause for the
25 individual's failure to participate in the services.

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1 B. A benefit year as provided in Section 51-1-4
2 NMSA 1978 and Subsection P of Section 51-1-42 NMSA 1978 may be
3 established; provided an individual may not receive benefits
4 in a benefit year unless, subsequent to the beginning of the
5 immediately preceding benefit year during which the individual
6 received benefits, the individual performed service in
7 "employment", as defined in Subsection F of Section 51-1-42
8 NMSA 1978, and earned remuneration for such service in an
9 amount equal to at least five times the individual's weekly
10 benefit amount.

11 C. Benefits based on service in employment defined
12 in Paragraph (8) of Subsection F of Section 51-1-42 and
13 Section 51-1-43 NMSA 1978 are to be paid in the same amount,
14 on the same terms and subject to the same conditions as
15 compensation payable on the basis of other services subject to
16 the Unemployment Compensation Law; except that:

17 (1) benefits based on services performed in
18 an instructional, research or principal administrative
19 capacity for an educational institution shall not be paid for
20 any week of unemployment commencing during the period between
21 two successive academic years or terms or, when an agreement
22 provides for a similar period between two regular but not
23 successive terms, during such period or during a period of
24 paid sabbatical leave provided for in the individual's
25 contract, to any individual if the individual performs such

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1 services in the first of such academic years or terms and if
2 there is a contract or a reasonable assurance that the
3 individual will perform services in any such capacity for any
4 educational institution in the second of such academic years
5 or terms;

6 (2) benefits based on services performed for
7 an educational institution other than in an instructional,
8 research or principal administrative capacity shall not be
9 paid for any week of unemployment commencing during a period
10 between two successive academic years or terms if the services
11 are performed in the first of such academic years or terms and
12 there is a reasonable assurance that the individual will
13 perform services for any educational institution in the second
14 of such academic years or terms. If compensation is denied to
15 an individual under this paragraph and the individual was not
16 offered an opportunity to perform such services for the
17 educational institution for the second of such academic years
18 or terms, the individual shall be entitled to a retroactive
19 payment of benefits for each week for which the individual
20 filed a claim and certified for benefits in accordance with
21 the rules of the division and for which benefits were denied
22 solely by reason of this paragraph;

23 (3) benefits shall be denied to any
24 individual for any week that commences during an established
25 and customary vacation period or holiday recess if the

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1 individual performs any services described in Paragraphs (1)
2 and (2) of this subsection in the period immediately before
3 such period of vacation or holiday recess and there is a
4 reasonable assurance that the individual will perform any such
5 services in the period immediately following such vacation
6 period or holiday recess;

7 (4) benefits shall not be payable on the
8 basis of services specified in Paragraphs (1) and (2) of this
9 subsection during the periods specified in Paragraphs (1), (2)
10 and (3) of this subsection to any individual who performed
11 such services in or to or on behalf of an educational
12 institution while in the employ of a state or local
13 governmental educational service agency or other governmental
14 entity or nonprofit organization; and

15 (5) for the purpose of this subsection, to
16 the extent permitted by federal law, "reasonable assurance"
17 means a reasonable expectation of employment in a similar
18 capacity in the second of such academic years or terms based
19 upon a consideration of all relevant factors, including the
20 historical pattern of reemployment in such capacity, a
21 reasonable anticipation that such employment will be available
22 and a reasonable notice or understanding that the individual
23 will be eligible for and offered employment in a similar
24 capacity.

25 D. Paragraphs (1), (2), (3), (4) and (5) of

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1 Subsection C of this section shall apply to services performed
2 for all educational institutions, public or private, for
3 profit or nonprofit, which are operated in this state or
4 subject to an agreement for coverage under the Unemployment
5 Compensation Law of this state, unless otherwise exempt by
6 law.

7 E. Notwithstanding any other provisions of this
8 section or Section 51-1-7 NMSA 1978, no otherwise eligible
9 individual is to be denied benefits for any week because the
10 individual is in training with the approval of the division
11 nor is the individual to be denied benefits by reason of
12 application of provisions in Paragraph (3) of Subsection A of
13 this section or Subsection C of Section 51-1-7 NMSA 1978 with
14 respect to any week in which the individual is in training
15 with the approval of the division. The secretary shall
16 provide, by rule, standards for approved training and the
17 conditions for approving training for claimants, including any
18 training approved or authorized for approval pursuant to
19 Section 236(a)(1) and (2) of the Trade Act of 1974, as
20 amended, or required to be approved as a condition for
21 certification of the state's Unemployment Compensation Law by
22 the United States secretary of labor.

23 F. Notwithstanding any other provisions of this
24 section, benefits shall not be payable on the basis of
25 services performed by an alien unless such alien is an

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1 individual who was lawfully admitted for permanent residence
2 at the time the services were performed, was lawfully present
3 for the purposes of performing the services or was permanently
4 residing in the United States under color of law at the time
5 the services were performed, including an alien who was
6 lawfully present in the United States as a result of the
7 application of the provisions of Section 212(d)(5) of the
8 Immigration and Nationality Act; provided that:

9 (1) any information required of individuals
10 applying for benefits to determine their eligibility for
11 benefits under this subsection shall be uniformly required
12 from all applicants for benefits; and

13 (2) an individual shall not be denied
14 benefits because of the individual's alien status except upon
15 a preponderance of the evidence.

16 G. Notwithstanding any other provision of this
17 section, benefits shall not be paid to any individual on the
18 basis of any services substantially all of which consist of
19 participating in sports or athletic events or training or
20 preparing to so participate for any week that commences during
21 the period between two successive sport seasons, or similar
22 periods, if the individual performed the services in the first
23 of such seasons, or similar periods, and there is a reasonable
24 assurance that the individual will perform the services in the
25 latter of such seasons or similar periods.

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1 H. Students who are enrolled in a full-time course
2 schedule in an educational or training institution or program,
3 other than those persons in an approved vocational training
4 program in accordance with Subsection E of this section, shall
5 not be eligible for unemployment benefits except as provided
6 by regulations promulgated by the secretary.

7 I. As used in this subsection, "seasonal ski
8 employee" means an employee who has not worked for a ski area
9 operator for more than six consecutive months of the previous
10 twelve months or nine of the previous twelve months. An
11 employee of a ski area operator who has worked for a ski area
12 operator for six consecutive months of the previous twelve
13 months or nine of the previous twelve months shall not be
14 considered a seasonal ski employee. The following benefit
15 eligibility conditions apply to a seasonal ski employee:

16 (1) except as provided in Paragraphs (2) and
17 (3) of this subsection, a seasonal ski employee employed by a
18 ski area operator on a regular seasonal basis shall be
19 ineligible for a week of unemployment benefits that commences
20 during a period between two successive ski seasons unless the
21 individual establishes to the satisfaction of the secretary
22 that the individual is available for and is making an active
23 search for permanent full-time work;

24 (2) a seasonal ski employee who has been
25 employed by a ski area operator during two successive ski

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1 seasons shall be presumed to be unavailable for permanent new
2 work during a period after the second successive ski season
3 that the individual was employed as a seasonal ski employee;
4 and

5 (3) the presumption described in Paragraph
6 (2) of this subsection shall not arise as to any seasonal ski
7 employee who has been employed by the same ski area operator
8 during two successive ski seasons and has resided continuously
9 for at least twelve successive months and continues to reside
10 in the county in which the ski area facility is located.

11 J. Notwithstanding any other provision of this
12 section, an otherwise eligible individual shall not be denied
13 benefits for any week by reason of the application of
14 Paragraph (3) of Subsection A of this section because the
15 individual is before any court of the United States or any
16 state pursuant to a lawfully issued summons to appear for jury
17 duty."

18 Section 8. Section 51-1-7 NMSA 1978 (being Laws 2003,
19 Chapter 47, Section 10, as amended by Section 3 of this act)
20 is repealed and a new Section 51-1-7 NMSA 1978 is enacted to
21 read:

22 "51-1-7. [NEW MATERIAL] DISQUALIFICATION FOR
23 BENEFITS.--

24 A. An individual shall be disqualified for, and
25 shall not be eligible to receive, benefits:

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1 (1) if it is determined by the division that
2 the individual left employment voluntarily without good cause
3 in connection with the employment; provided, however, that a
4 person shall not be denied benefits under this paragraph
5 solely on the basis of pregnancy or the termination of
6 pregnancy;

7 (2) if it is determined by the division that
8 the individual has been discharged for misconduct connected
9 with the individual's employment; or

10 (3) if it is determined by the division that
11 the individual has failed without good cause either to apply
12 for available, suitable work when so directed or referred by
13 the division or to accept suitable work when offered.

14 B. In determining whether or not any work is
15 suitable for an individual pursuant to Paragraph (3) of
16 Subsection A of this section, the division shall consider the
17 degree of risk involved to the individual's health, safety and
18 morals, the individual's physical fitness, prior training,
19 experience, prior earnings, length of unemployment and
20 prospects for securing local work in the individual's
21 customary occupation and the distance of available work from
22 the individual's residence. Notwithstanding any other
23 provisions of the Unemployment Compensation Law, no work shall
24 be deemed suitable and benefits shall not be denied under the
25 Unemployment Compensation Law to any otherwise eligible

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1 individual for refusing to accept new work under any of the
2 following conditions:

3 (1) if the position offered is vacant due
4 directly to a strike, lockout or other labor dispute;

5 (2) if the wages, hours or other conditions
6 of the work offered are substantially less favorable to the
7 individual than those prevailing for similar work in the
8 locality; or

9 (3) if, as a condition of being employed,
10 the individual would be required to join a company union or to
11 resign from or refrain from joining any bona fide labor
12 organizations.

13 C. An individual shall be disqualified for, and
14 shall not be eligible to receive, benefits for any week with
15 respect to which the division finds that the individual's
16 unemployment is due to a labor dispute at the factory,
17 establishment or other premises at which the individual is or
18 was last employed; provided that this subsection shall not
19 apply if it is shown to the satisfaction of the division that:

20 (1) the individual is not participating in
21 or directly interested in the labor dispute; and

22 (2) the individual does not belong to a
23 grade or class of workers of which, immediately before the
24 commencement of the labor dispute, there were members employed
25 at the premises at which the labor dispute occurs, any of whom

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1 are participating in or directly interested in the dispute;
2 provided that if in any case separate branches of work that
3 are commonly conducted in separate businesses in separate
4 premises are conducted in separate departments of the same
5 premises, each such department shall, for the purposes of this
6 subsection, be deemed to be a separate factory, establishment
7 or other premises.

8 D. An individual shall be disqualified for, and
9 shall not be eligible to receive, benefits for any week with
10 respect to which, or a part of which, the individual has
11 received or is seeking, through any agency other than the
12 division, unemployment benefits under an unemployment
13 compensation law of another state or of the United States;
14 provided that if the appropriate agency of such other state or
15 of the United States finally determines that the individual is
16 not entitled to such unemployment benefits, this
17 disqualification shall not apply.

18 E. A disqualification pursuant to Paragraph (1) or
19 (2) of Subsection A of this section shall continue for the
20 duration of the individual's unemployment and until the
21 individual has earned wages in bona fide employment other than
22 self-employment, as provided by rule of the secretary, in an
23 amount equivalent to five times the individual's weekly
24 benefit otherwise payable. A disqualification pursuant to
25 Paragraph (3) of Subsection A of this section shall include

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1 the week the failure occurred and shall continue for the
2 duration of the individual's unemployment and until the
3 individual has earned wages in bona fide employment other than
4 self-employment, as provided by rule of the secretary, in an
5 amount equivalent to five times the individual's weekly
6 benefit amount otherwise payable; provided that no more than
7 one such disqualification shall be imposed upon an individual
8 for failure to apply for or accept the same position, or a
9 similar position, with the same employer, except upon a
10 determination by the division of disqualification pursuant to
11 Subsection C of this section.

12 F. As used in this section, "employment" means
13 employment by the individual's last employer as defined by
14 rules of the secretary."

15 Section 9. Section 51-1-11 NMSA 1978 (being Laws 2003,
16 Chapter 47, Section 11, as amended by Section 4 of this act)
17 is repealed and a new Section 51-1-11 NMSA 1978 is enacted to
18 read:

19 "51-1-11. [NEW MATERIAL] FUTURE RATES BASED ON BENEFIT
20 EXPERIENCE.--

21 A. The division shall maintain a separate account
22 for each contributing employer and shall credit the
23 contributing employer's account with all contributions paid by
24 that employer under the Unemployment Compensation Law.

25 Nothing in the Unemployment Compensation Law shall be

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1 construed to grant an employer or individuals in the
2 employer's service prior claims or rights to the amounts paid
3 by the employer into the fund.

4 B. Benefits paid to an individual shall be charged
5 against the accounts of the individual's base-period employers
6 on a pro rata basis according to the proportion of the
7 individual's total base-period wages received from each
8 employer, except that no benefits paid to a claimant as
9 extended benefits under the provisions of Section 51-1-48 NMSA
10 1978 shall be charged to the account of any base-period
11 employer who is not on a reimbursable basis and who is not a
12 governmental entity and, except as the secretary shall by rule
13 prescribe otherwise, in the case of benefits paid to an
14 individual who:

15 (1) left the employ of a base-period
16 employer who is not on a reimbursable basis voluntarily
17 without good cause in connection with the individual's
18 employment;

19 (2) was discharged from the employment of a
20 base-period employer who is not on a reimbursable basis for
21 misconduct connected with the individual's employment;

22 (3) is employed part time by a base-period
23 employer who is not on a reimbursable basis and who continues
24 to furnish the individual the same part-time work while the
25 individual is separated from full-time work for a

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1 nondisqualifying reason; or

2 (4) received benefits based upon wages
3 earned from a base-period employer who is not on a
4 reimbursable basis while attending approved training under the
5 provisions of Subsection E of Section 51-1-5 NMSA 1978.

6 C. The division shall not charge a contributing or
7 reimbursing base-period employer's account with any portion of
8 benefit amounts that the division can bill to or recover from
9 the federal government as either regular or extended benefits.

10 D. All contributions to the fund shall be pooled
11 and available to pay benefits to any individual entitled
12 thereto, irrespective of the source of such contributions.
13 The standard rate of contributions payable by each employer
14 shall be five and four-tenths percent.

15 E. An employer's rate shall not be varied from the
16 standard rate for any calendar year unless, as of the
17 computation date for that year, the employer's account has
18 been chargeable with benefits throughout the preceding
19 thirty-six months, except that:

20 (1) the provisions of this subsection shall
21 not apply to governmental entities;

22 (2) subsequent to December 31, 1984, any
23 employing unit that becomes an employer subject to the payment
24 of contributions under the Unemployment Compensation Law or
25 has been an employer subject to the payment of contributions

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1 at a standard rate of two and seven-tenths percent through
2 December 31, 1984 shall be subject to the payment of
3 contributions at the reduced rate of two and seven-tenths
4 percent until, as of the computation date of a particular
5 year, the employer's account has been chargeable with benefits
6 throughout the preceding thirty-six months; and

7 (3) any individual, type of organization or
8 employing unit that acquires all or part of the trade or
9 business of another employing unit, pursuant to Paragraphs (2)
10 and (3) of Subsection E of Section 51-1-42 NMSA 1978, that has
11 a reduced rate of contribution shall be entitled to the
12 transfer of the reduced rate to the extent permitted under
13 Subsection G of this section.

14 F. The secretary shall, for the year 1942 and for
15 each calendar year thereafter, classify employers in
16 accordance with their actual experience in the payment of
17 contributions and with respect to benefits charged against
18 their accounts, with a view of fixing such contribution rates
19 as will reflect such benefit experience. An employer's rate
20 for any calendar year shall be determined on the basis of the
21 employer's record and the condition of the fund as of the
22 computation date for such calendar year.

23 An employer may make voluntary payments in addition to
24 the contributions required under the Unemployment Compensation
25 Law, which shall be credited to the employer's account in

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1 accordance with department rule. The voluntary payments shall
2 be included in the employer's account as of the employer's
3 most recent computation date if they are made on or before the
4 following March 1. Voluntary payments when accepted from an
5 employer shall not be refunded in whole or in part.

6 G. In the case of a transfer of an employing
7 enterprise, the experience history of the transferred
8 enterprise as provided in Subsection F of this section shall
9 be transferred from the predecessor employer to the successor
10 under the following conditions and in accordance with the
11 applicable rules of the secretary:

12 (1) Definitions:

13 (a) "employing enterprise" is a
14 business activity engaged in by a contributing employing unit
15 in which one or more persons have been employed within the
16 current or the three preceding calendar quarters;

17 (b) "predecessor" means the owner and
18 operator of an employing enterprise immediately prior to the
19 transfer of such enterprise;

20 (c) "successor" means any individual or
21 any type of organization that acquires an employing enterprise
22 and continues to operate such business entity; and

23 (d) "experience history" means the
24 experience rating record and reserve account, including the
25 actual contributions, benefit charges and payroll experience

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1 of the employing enterprise.

2 (2) For the purpose of this section, two or
3 more employers who are parties to or the subject of any
4 transaction involving the transfer of an employing enterprise
5 shall be deemed to be a single employer and the experience
6 history of the employing enterprise shall be transferred to
7 the successor employer if the successor employer has acquired
8 by the transaction all of the business enterprises of the
9 predecessor; provided that:

10 (a) all contributions, interest and
11 penalties due from the predecessor employer have been paid;

12 (b) notice of the transfer has been
13 given in accordance with the rules of the secretary within
14 four years of the transaction transferring the employing
15 enterprise or the date of the actual transfer of control and
16 operation of the employing enterprise;

17 (c) in the case of the transfer of an
18 employing enterprise, the successor employer must notify the
19 division of the acquisition on or before the due date of the
20 successor employer's first wage and contribution report. If
21 the successor employer fails to notify the division of the
22 acquisition within this time limit, the division, when it
23 receives actual notice, shall effect the transfer of the
24 experience history and applicable rate of contribution
25 retroactively to the date of the acquisition, and the

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1 successor shall pay a penalty of fifty dollars (\$50.00); and

2 (d) where the transaction involves only
3 a merger, consolidation or other form of reorganization
4 without a substantial change in the ownership and controlling
5 interest of the business entity, as determined by the
6 secretary, the limitations on transfers stated in
7 Subparagraphs (a), (b) and (c) of this paragraph shall not
8 apply. A party to a merger, consolidation or other form of
9 reorganization described in this paragraph shall not be
10 relieved of liability for any contributions, interest or
11 penalties due and owing from the employing enterprise at the
12 time of the merger, consolidation or other form of
13 reorganization.

14 (3) The applicable experience history may be
15 transferred to the successor in the case of a partial transfer
16 of an employing enterprise if the successor has acquired one
17 or more of the several employing enterprises of a predecessor
18 but not all of the employing enterprises of the predecessor
19 and each employing enterprise so acquired was operated by the
20 predecessor as a separate store, factory, shop or other
21 separate employing enterprise and the predecessor, throughout
22 the entire period of the contribution with liability
23 applicable to each enterprise transferred, has maintained and
24 preserved payroll records that, together with records of
25 contribution liability and benefit chargeability, can be

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1 separated by the parties from the enterprises retained by the
2 predecessor to the satisfaction of the secretary or the
3 secretary's delegate. A partial experience history transfer
4 will be made only if:

5 (a) the successor notifies the division
6 of the acquisition, in writing, not later than the due date of
7 the successor's first quarterly wage and contribution report
8 after the effective date of the acquisition;

9 (b) the successor files an application
10 provided by the division that contains the endorsement of the
11 predecessor within thirty days from the delivery or mailing of
12 such application by the division to the successor's last known
13 address; and

14 (c) the successor files with the
15 application a Form ES-903A or its equivalent with a schedule
16 of the name and social security number of and the wages paid
17 to and the contributions paid for each employee for the three
18 and one-half year period preceding the computation date as
19 defined in Subparagraph (d) of Paragraph (3) of Subsection H
20 of this section through the date of transfer or such lesser
21 period as the enterprises transferred may have been in
22 operation. The application and Form ES-903A shall be
23 supported by the predecessor's permanent employment records,
24 which shall be available for audit by the division. The
25 application and Form ES-903A shall be reviewed by the division

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1 and, upon approval, the percentage of the predecessor's
2 experience history attributable to the enterprises transferred
3 shall be transferred to the successor. The percentage shall
4 be obtained by dividing the taxable payrolls of the
5 transferred enterprises for such three and one-half year
6 period preceding the date of computation or such lesser period
7 as the enterprises transferred may have been in operation by
8 the predecessor's entire payroll.

9 H. For each calendar year, adjustments of
10 contribution rates below the standard or reduced rate and
11 measures designed to protect the fund are provided in
12 Paragraphs (1) through (4) of this subsection.

13 (1) The total assets in the fund and the
14 total of the last annual payrolls of all employers subject to
15 contributions as of the computation date for each year shall
16 be determined. These annual totals are here called "the fund"
17 and "total payrolls". For each year, the "reserve" of each
18 employer qualified under Subsection E of this section shall be
19 fixed by the excess of the employer's total contributions over
20 total benefit charges computed as a percentage of the
21 employer's average payroll reported for contributions. The
22 determination of each employer's annual rate, computed as of
23 the computation date for each calendar year, shall be made by
24 matching the employer's reserve as shown in the reserve column
25 with the corresponding rate in the rate column of the

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1 applicable rate schedule of the table provided in Paragraph
2 (4) of this subsection.

3 (2) Each employer's rate for each calendar
4 year commencing January 1, 1979 or thereafter shall be:

5 (a) the corresponding rate in Schedule
6 1 of the table provided in Paragraph (4) of this subsection if
7 the fund equals at least three and four-tenths percent of the
8 total payrolls;

9 (b) the corresponding rate in Schedule
10 2 of the table provided in Paragraph (4) of this subsection if
11 the fund has dropped to less than three and four-tenths
12 percent and not less than two and seven-tenths percent of the
13 total payrolls;

14 (c) the corresponding rate in Schedule
15 3 of the table provided in Paragraph (4) of this subsection if
16 the fund has dropped to less than two and seven-tenths percent
17 and not less than two percent of the total payrolls;

18 (d) the corresponding rate in Schedule
19 4 of the table provided in Paragraph (4) of this subsection if
20 the fund has dropped to less than two percent and not less
21 than one and one-half percent of the total payrolls;

22 (e) the corresponding rate in Schedule
23 5 of the table provided in Paragraph (4) of this subsection if
24 the fund has dropped to less than one and one-half percent and
25 not less than one percent of the total payrolls; or

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1 (f) the corresponding rate in Schedule
2 6 of the table provided in Paragraph (4) of this subsection if
3 the fund has dropped less than one percent of the total
4 payrolls.

5 (3) As used in this section:

6 (a) "annual payroll" means the total
7 amount of remuneration from an employer for employment during
8 a twelve-month period ending on a computation date, and
9 "average payroll" means the average of the last three annual
10 payrolls;

11 (b) "base-period wages" means the wages
12 of an individual for insured work during the individual's base
13 period on the basis of which the individual's benefit rights
14 were determined;

15 (c) "base-period employers" means the
16 employers of an individual during the individual's base
17 period; and

18 (d) "computation date" for each
19 calendar year means the close of business on June 30 of the
20 preceding calendar year.

21 (4) Table of employer reserves and
22 contribution rate schedules:

23 Employer	Contribution	Contribution	Contribution
24 Reserve	Schedule 1	Schedule 2	Schedule 3
25 10.0% and over	0.05%	0.1%	0.6%

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1	9.0%-9.9%	0.1%	0.2%	0.9%
2	8.0%-8.9%	0.2%	0.4%	1.2%
3	7.0%-7.9%	0.4%	0.6%	1.5%
4	6.0%-6.9%	0.6%	0.8%	1.8%
5	5.0%-5.9%	0.8%	1.1%	2.1%
6	4.0%-4.9%	1.1%	1.4%	2.4%
7	3.0%-3.9%	1.4%	1.7%	2.7%
8	2.0%-2.9%	1.7%	2.0%	3.0%
9	1.0%-1.9%	2.0%	2.4%	3.3%
10	0.9%-0.0%	2.4%	3.3%	3.6%
11	(-0.1%)-(-0.5%)	3.3%	3.6%	3.9%
12	(-0.5%)-(-1.0%)	4.2%	4.2%	4.2%
13	(-1.0%)-(-2.0%)	5.0%	5.0%	5.0%
14	Under (-2.0%)	5.4%	5.4%	5.4%
15	Employer	Contribution	Contribution	Contribution
16	Reserve	Schedule 4	Schedule 5	Schedule 6
17	10.0% and over	0.9%	1.2%	2.7%
18	9.0%-9.9%	1.2%	1.5%	2.7%
19	8.0%-8.9%	1.5%	1.8%	2.7%
20	7.0%-7.9%	1.8%	2.1%	2.7%
21	6.0%-6.9%	2.1%	2.4%	2.7%
22	5.0%-5.9%	2.4%	2.7%	3.0%
23	4.0%-4.9%	2.7%	3.0%	3.3%
24	3.0%-3.9%	3.0%	3.3%	3.6%
25	2.0%-2.9%	3.3%	3.6%	3.9%

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1	1.0%-1.9%	3.6%	3.9%	4.2%
2	0.9%-0.0%	3.9%	4.2%	4.5%
3	(-0.1%)-(-0.5%)	4.2%	4.5%	4.8%
4	(-0.5%)-(-1.0%)	4.5%	4.8%	5.1%
5	(-1.0%)-(-2.0%)	5.0%	5.1%	5.3%
6	Under (-2.0%)	5.4%	5.4%	5.4%.

7 I. The division shall promptly notify each
8 employer of the employer's rate of contributions as determined
9 for any calendar year pursuant to this section. Such
10 notification shall include the amount determined as the
11 employer's average payroll, the total of all of the employer's
12 contributions paid on the employer's behalf and credited to
13 the employer's account for all past years and total benefits
14 charged to the employer's account for all such years. Such
15 determination shall become conclusive and binding upon the
16 employer unless, within thirty days after the mailing of
17 notice thereof to the employer's last known address or in the
18 absence of mailing, within thirty days after the delivery of
19 such notice, the employer files an application for review and
20 redetermination, setting forth the employer's reason therefor.
21 The employer shall be granted an opportunity for a fair
22 hearing in accordance with rules prescribed by the secretary,
23 but an employer shall not have standing, in any proceeding
24 involving the employer's rate of contributions or contribution
25 liability, to contest the chargeability to the employer's

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1 account of any benefits paid in accordance with a
2 determination, redetermination or decision pursuant to Section
3 51-1-8 NMSA 1978, except upon the ground that the services on
4 the basis of which such benefits were found to be chargeable
5 did not constitute services performed in employment for the
6 employer and only in the event that the employer was not a
7 party to such determination, redetermination or decision, or
8 to any other proceedings under the Unemployment Compensation
9 Law in which the character of such services was determined.
10 The employer shall be promptly notified of the decision on the
11 employer's application for redetermination, which shall become
12 final unless, within fifteen days after the mailing of notice
13 thereof to the employer's last known address or in the absence
14 of mailing, within fifteen days after the delivery of such
15 notice, further appeal is initiated pursuant to Subsection D
16 of Section 51-1-8 NMSA 1978.

17 J. The division shall provide each contributing
18 employer, within ninety days of the end of each calendar
19 quarter, a written determination of benefits chargeable to the
20 employer's account. Such determination shall become
21 conclusive and binding upon the employer for all purposes
22 unless, within thirty days after the mailing of the
23 determination to the employer's last known address or in the
24 absence of mailing, within thirty days after the delivery of
25 such determination, the employer files an application for

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1 review and redetermination, setting forth the employer's
2 reason therefor. The employer shall be granted an opportunity
3 for a fair hearing in accordance with rules prescribed by the
4 secretary, but an employer shall not have standing in any
5 proceeding involving the employer's contribution liability to
6 contest the chargeability to the employer's account of any
7 benefits paid in accordance with a determination,
8 redetermination or decision pursuant to Section 51-1-8 NMSA
9 1978, except upon the ground that the services on the basis of
10 which such benefits were found to be chargeable did not
11 constitute services performed in employment for the employer
12 and only in the event that the employer was not a party to
13 such determination, redetermination or decision, or to any
14 other proceedings under the Unemployment Compensation Law in
15 which the character of such services was determined. The
16 employer shall be promptly notified of the decision on the
17 employer's application for redetermination, which shall become
18 final unless, within fifteen days after the mailing of notice
19 thereof to the employer's last known address or in the absence
20 of mailing, within fifteen days after the delivery of such
21 notice, further appeal is initiated pursuant to Subsection D
22 of Section 51-1-8 NMSA 1978.

23 K. The contributions, together with interest and
24 penalties thereon imposed by the Unemployment Compensation
25 Law, shall not be assessed nor shall action to collect the

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1 same be commenced more than four years after a report showing
2 the amount of the contributions was due. In the case of a
3 false or fraudulent contribution report with intent to evade
4 contributions or a willful failure to file a report of all
5 contributions due, the contributions, together with interest
6 and penalties thereon, may be assessed or an action to collect
7 such contributions may be begun at any time. Before the
8 expiration of such period of limitation, the employer and the
9 secretary may agree in writing to an extension thereof and the
10 period so agreed on may be extended by subsequent agreements
11 in writing. In any case where the assessment has been made
12 and action to collect has been commenced within four years of
13 the due date of any contribution, interest or penalty,
14 including the filing of a warrant of lien by the secretary
15 pursuant to Section 51-1-36 NMSA 1978, such action shall not
16 be subject to any period of limitation.

17 L. The secretary shall correct any error in the
18 determination of an employer's rate of contribution during the
19 calendar year to which the erroneous rate applies,
20 notwithstanding that notification of the employer's rate of
21 contribution may have been issued and contributions paid
22 pursuant to the notification. Upon issuance by the division
23 of a corrected rate of contribution, the employer shall have
24 the same rights to review and redetermination as provided in
25 Subsection I of this section.

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1 M. Any interest required to be paid on advances to
2 this state's unemployment compensation fund under Title 12 of
3 the Social Security Act shall be paid in a timely manner as
4 required under Section 1202 of Title 12 of the Social Security
5 Act and shall not be paid, directly or indirectly, by the
6 state from amounts in the state's unemployment compensation
7 fund."

8 Section 10. Section 51-1-42 NMSA 1978 (being Laws 2003,
9 Chapter 47, Section 12, as amended by Section 5 of this act)
10 is repealed and a new Section 51-1-42 NMSA 1978 is enacted to
11 read:

12 "51-1-42. [NEW MATERIAL] DEFINITIONS.--As used in the
13 Unemployment Compensation Law:

14 A. "base period" means the first four of the last
15 five completed calendar quarters immediately preceding the
16 first day of an individual's benefit year;

17 B. "benefits" means the cash unemployment
18 compensation payments payable to an eligible individual
19 pursuant to Section 51-1-4 NMSA 1978 with respect to the
20 individual's weeks of unemployment;

21 C. "contributions" means the money payments
22 required by Section 51-1-9 NMSA 1978 to be made into the fund
23 by an employer on account of having individuals performing
24 services for the employer;

25 D. "employing unit" means any individual or type

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1 of organization, including any partnership, association,
2 cooperative, trust, estate, joint-stock company, agricultural
3 enterprise, insurance company or corporation, whether domestic
4 or foreign, or the receiver, trustee in bankruptcy, trustee or
5 successor thereof, household, fraternity or club, the legal
6 representative of a deceased person or any state or local
7 government entity to the extent required by law to be covered
8 as an employer, which has in its employ one or more
9 individuals performing services for it within this state. An
10 individual performing services for an employing unit that
11 maintains two or more separate establishments within this
12 state shall be deemed to be employed by a single employing
13 unit for all the purposes of the Unemployment Compensation
14 Law. An individual performing services for a contractor,
15 subcontractor or agent that is performing work or services for
16 an employing unit, as described in this subsection, which is
17 within the scope of the employing unit's usual trade,
18 occupation, profession or business, shall be deemed to be in
19 the employ of the employing unit for all purposes of the
20 Unemployment Compensation Law unless the contractor,
21 subcontractor or agent is itself an employer within the
22 provisions of Subsection E of this section;

23 E. "employer" includes:

24 (1) an employing unit that:

25 (a) unless otherwise provided in this

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1 section, paid for service in employment as defined in
2 Subsection F of this section wages of four hundred fifty
3 dollars (\$450) or more in any calendar quarter in either the
4 current or preceding calendar year or had in employment, as
5 defined in Subsection F of this section, for some portion of a
6 day in each of twenty different calendar weeks during either
7 the current or the preceding calendar year, and irrespective
8 of whether the same individual was in employment in each such
9 day, at least one individual;

10 (b) for the purposes of Subparagraph
11 (a) of this paragraph, if any week includes both December 31
12 and January 1, the days of that week up to January 1 shall be
13 deemed one calendar week and the days beginning January 1,
14 another such week; and

15 (c) for purposes of defining an
16 "employer" under Subparagraph (a) of this paragraph, the wages
17 or remuneration paid to individuals performing services in
18 employment in agricultural labor or domestic services as
19 provided in Paragraphs (6) and (7) of Subsection F of this
20 section shall not be taken into account; except that any
21 employing unit determined to be an employer of agricultural
22 labor under Paragraph (6) of Subsection F of this section
23 shall be an employer under Subparagraph (a) of this paragraph
24 so long as the employing unit is paying wages or remuneration
25 for services other than agricultural services;

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1 (2) any individual or type of organization
2 that acquired the trade or business or substantially all of
3 the assets thereof, of an employing unit that at the time of
4 the acquisition was an employer subject to the Unemployment
5 Compensation Law; provided that where such an acquisition
6 takes place, the secretary may postpone activating the
7 separate account pursuant to Subsection A of Section 51-1-11
8 NMSA 1978 until such time as the successor employer has
9 employment as defined in Subsection F of this section;

10 (3) an employing unit that acquired all or
11 part of the organization, trade, business or assets of another
12 employing unit and that, if treated as a single unit with the
13 other employing unit or part thereof, would be an employer
14 under Paragraph (1) of this subsection;

15 (4) an employing unit not an employer by
16 reason of any other paragraph of this subsection:

17 (a) for which, within either the
18 current or preceding calendar year, service is or was
19 performed with respect to which such employing unit is liable
20 for any federal tax against which credit may be taken for
21 contributions required to be paid into a state unemployment
22 fund; or

23 (b) that, as a condition for approval
24 of the Unemployment Compensation Law for full tax credit
25 against the tax imposed by the Federal Unemployment Tax Act,

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1 is required, pursuant to that act, to be an "employer" under
2 the Unemployment Compensation Law;

3 (5) an employing unit that, having become an
4 employer under Paragraph (1), (2), (3) or (4) of this
5 subsection, has not, under Section 51-1-18 NMSA 1978, ceased
6 to be an employer subject to the Unemployment Compensation
7 Law;

8 (6) for the effective period of its election
9 pursuant to Section 51-1-18 NMSA 1978, any other employing
10 unit that has elected to become fully subject to the
11 Unemployment Compensation Law;

12 (7) an employing unit for which any services
13 performed in its employ are deemed to be performed in this
14 state pursuant to an election under an arrangement entered
15 into in accordance with Subsection A of Section 51-1-50 NMSA
16 1978; and

17 (8) an Indian tribe as defined in 26 USCA
18 Section 3306(u) for which service in employment is performed;

19 F. "employment":

20 (1) means any service, including service in
21 interstate commerce, performed for wages or under any contract
22 of hire, written or oral, express or implied;

23 (2) means an individual's entire service,
24 performed within or both within and without this state if:

25 (a) the service is primarily localized

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1 in this state with services performed outside the state being
2 only incidental thereto; or

3 (b) the service is not localized in any
4 state but some of the service is performed in this state and:

5 1) the base of operations or, if there is no base of
6 operations, the place from which such service is directed or
7 controlled, is in this state; or 2) the base of operations or
8 place from which such service is directed or controlled is not
9 in any state in which some part of the service is performed
10 but the individual's residence is in this state;

11 (3) means services performed within this
12 state but not covered under Paragraph (2) of this subsection
13 if contributions or payments in lieu of contributions are not
14 required and paid with respect to such services under an
15 unemployment compensation law of any other state, the federal
16 government or Canada;

17 (4) means services covered by an election
18 pursuant to Section 51-1-18 NMSA 1978 and services covered by
19 an election duly approved by the secretary in accordance with
20 an arrangement pursuant to Paragraph (1) of Subsection A of
21 Section 51-1-50 NMSA 1978 shall be deemed to be employment
22 during the effective period of the election;

23 (5) means services performed by an
24 individual for an employer for wages or other remuneration
25 unless and until it is established by a preponderance of

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1 evidence that:

2 (a) the individual has been and will
3 continue to be free from control or direction over the
4 performance of the services both under the individual's
5 contract of service and in fact;

6 (b) the service is either outside the
7 usual course of business for which the service is performed or
8 that such service is performed outside of all the places of
9 business of the enterprise for which such service is
10 performed; and

11 (c) the individual is customarily
12 engaged in an independently established trade, occupation,
13 profession or business of the same nature as that involved in
14 the contract of service;

15 (6) means service performed after December
16 31, 1977 by an individual in agricultural labor as defined in
17 Subsection Q of this section if:

18 (a) the service is performed for an
19 employing unit that: 1) paid remuneration in cash of twenty
20 thousand dollars (\$20,000) or more to individuals in that
21 employment during any calendar quarter in either the current
22 or the preceding calendar year; or 2) employed in agricultural
23 labor ten or more individuals for some portion of a day in
24 each of twenty different calendar weeks in either the current
25 or preceding calendar year, whether or not the weeks were

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1 consecutive, and regardless of whether the individuals were
2 employed at the same time;

3 (b) the service is not performed before
4 January 1, 1980 by an individual who is an alien admitted to
5 the United States to perform service in agricultural labor
6 pursuant to Sections 214(c) and 101(15)(H) of the federal
7 Immigration and Nationality Act; and

8 (c) for purposes of this paragraph, an
9 individual who is a member of a crew furnished by a crew
10 leader to perform service in agricultural labor for a farm
11 operator or other person shall be treated as an employee of
12 the crew leader: 1) if the crew leader meets the requirements
13 of a crew leader as defined in Subsection L of this section;
14 or 2) substantially all the members of the crew operate or
15 maintain mechanized agricultural equipment that is provided by
16 the crew leader; and 3) the individuals performing the
17 services are not, by written agreement or in fact, within the
18 meaning of Paragraph (5) of this subsection, performing
19 services in employment for the farm operator or other person;

20 (7) means service performed after December
21 31, 1977 by an individual in domestic service in a private
22 home, local college club or local chapter of a college
23 fraternity or sorority for a person or organization that paid
24 cash remuneration of one thousand dollars (\$1,000) in any
25 calendar quarter in the current or preceding calendar year to

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1 individuals performing such services;

2 (8) means service performed after December
3 31, 1971 by an individual in the employ of a religious,
4 charitable, educational or other organization but only if the
5 following conditions are met:

6 (a) the service is excluded from
7 "employment" as defined in the Federal Unemployment Tax Act
8 solely by reason of Section 3306(c)(8) of that act; and

9 (b) the organization meets the
10 requirements of "employer" as provided in Subparagraph (a) of
11 Paragraph (1) of Subsection E of this section;

12 (9) means service of an individual who is a
13 citizen of the United States, performed outside the United
14 States, except in Canada, after December 31, 1971 in the
15 employ of an American employer, other than service that is
16 deemed "employment" under the provisions of Paragraph (2) of
17 this subsection or the parallel provisions of another state's
18 law, if:

19 (a) the employer's principal place of
20 business in the United States is located in this state;

21 (b) the employer has no place of
22 business in the United States, but: 1) the employer is an
23 individual who is a resident of this state; 2) the employer is
24 a corporation organized under the laws of this state; or 3)
25 the employer is a partnership or a trust and the number of the

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1 partners or trustees who are residents of this state is
2 greater than the number who are residents of any one other
3 state; or

4 (c) none of the criteria of
5 Subparagraphs (a) and (b) of this paragraph are met, but the
6 employer has elected coverage in this state or, the employer
7 having failed to elect coverage in any state, the individual
8 has filed a claim for benefits, based on such service, under
9 the law of this state.

10 "American employer" for the purposes of this paragraph
11 means a person who is: 1) an individual who is a resident of
12 the United States; 2) a partnership if two-thirds or more of
13 the partners are residents of the United States; 3) a trust if
14 all of the trustees are residents of the United States; or 4)
15 a corporation organized under the laws of the United States or
16 of any state. For the purposes of this paragraph, "United
17 States" includes the United States, the District of Columbia,
18 the commonwealth of Puerto Rico and the Virgin Islands;

19 (10) means, notwithstanding any other
20 provisions of this subsection, service with respect to which a
21 tax is required to be paid under any federal law imposing a
22 tax against which credit may be taken for contributions
23 required to be paid into a state unemployment fund or which as
24 a condition for full tax credit against the tax imposed by the
25 Federal Unemployment Tax Act is required to be covered under

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1 the Unemployment Compensation Law;

2 (11) means service performed in the employ
3 of an Indian tribe if:

4 (a) the service is excluded from
5 "employment" as defined in 26 USCA Section 3306(c) solely by
6 reason of 26 USCA Section 3306(c)(7); and

7 (b) the service is not otherwise
8 excluded from employment pursuant to the Unemployment
9 Compensation Law;

10 (12) does not include:

11 (a) service performed in the employ of:
12 1) a church or convention or association of churches; or 2) an
13 organization that is operated primarily for religious purposes
14 and that is operated, supervised, controlled or principally
15 supported by a church or convention or association of
16 churches;

17 (b) service performed by a duly
18 ordained, commissioned or licensed minister of a church in the
19 exercise of his ministry or by a member of a religious order
20 in the exercise of duties required by such order;

21 (c) service performed by an individual
22 in the employ of his son, daughter or spouse, and service
23 performed by a child under the age of majority in the employ
24 of his father or mother;

25 (d) service performed in the employ of

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1 the United States government or an instrumentality of the
2 United States immune under the constitution of the United
3 States from the contributions imposed by the Unemployment
4 Compensation Law except that to the extent that the congress
5 of the United States shall permit states to require any
6 instrumentalities of the United States to make payments into
7 an unemployment fund under a state unemployment compensation
8 act, all of the provisions of the Unemployment Compensation
9 Law shall be applicable to such instrumentalities, and to
10 service performed for such instrumentalities in the same
11 manner, to the same extent and on the same terms as to all
12 other employers, employing units, individuals and services;
13 provided that if this state shall not be certified for any
14 year by the secretary of labor of the United States under
15 Section 3304 of the federal Internal Revenue Code of 1986, 26
16 U.S.C. Section 3304, the payments required of such
17 instrumentalities with respect to such year shall be refunded
18 by the department from the fund in the same manner and within
19 the same period as is provided in Subsection D of Section
20 51-1-36 NMSA 1978 with respect to contributions erroneously
21 collected;

22 (e) service performed in a facility
23 conducted for the purpose of carrying out a program of
24 rehabilitation for individuals whose earning capacity is
25 impaired by age or physical or mental deficiency or injury or

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1 providing remunerative work for individuals who because of
2 their impaired physical or mental capacity cannot be readily
3 absorbed in the competitive labor market, by an individual
4 receiving that rehabilitation or remunerative work;

5 (f) service with respect to which
6 unemployment compensation is payable under an unemployment
7 compensation system established by an act of congress;

8 (g) service performed in the employ of
9 a foreign government, including service as a consular or other
10 officer or employee or a nondiplomatic representative;

11 (h) service performed by an individual
12 for a person as an insurance agent or as an insurance
13 solicitor, if all such service performed by the individual for
14 the person is performed for remuneration solely by way of
15 commission;

16 (i) service performed by an individual
17 under the age of eighteen in the delivery or distribution of
18 newspapers or shopping news, not including delivery or
19 distribution to any point for subsequent delivery or
20 distribution;

21 (j) service covered by an election duly
22 approved by the agency charged with the administration of any
23 other state or federal unemployment compensation law, in
24 accordance with an arrangement pursuant to Paragraph (1) of
25 Subsection A of Section 51-1-50 NMSA 1978 during the effective

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1 period of the election;

2 (k) service performed, as part of an
3 unemployment work-relief or work-training program assisted or
4 financed in whole or part by any federal agency or an agency
5 of a state or political subdivision thereof, by an individual
6 receiving the work relief or work training;

7 (l) service performed by an individual
8 who is enrolled at a nonprofit or public educational
9 institution that normally maintains a regular faculty and
10 curriculum and normally has a regularly organized body of
11 students in attendance at the place where its educational
12 activities are carried on as a student in a full-time program,
13 taken for credit at the institution that combines academic
14 instruction with work experience, if the service is an
15 integral part of such program and the institution has so
16 certified to the employer, except that this subparagraph shall
17 not apply to service performed in a program established for or
18 on behalf of an employer or group of employers;

19 (m) service performed in the employ of
20 a hospital, if the service is performed by a patient of the
21 hospital, or services performed by an inmate of a custodial or
22 penal institution for any employer;

23 (n) service performed by real estate
24 salesmen for others when the services are performed for
25 remuneration solely by way of commission;

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1 (o) service performed in the employ of
2 a school, college or university if the service is performed by
3 a student who is enrolled and is regularly attending classes
4 at the school, college or university;

5 (p) service performed by an individual
6 for a fixed or contract fee officiating at a sporting event
7 that is conducted by or under the auspices of a nonprofit or
8 governmental entity if that person is not otherwise an
9 employee of the entity conducting the sporting event;

10 (q) service performed for a private,
11 for-profit person or entity by an individual as a product
12 demonstrator or product merchandiser if the service is
13 performed pursuant to a written contract between that
14 individual and a person or entity whose principal business is
15 obtaining the services of product demonstrators and product
16 merchandisers for third parties, for demonstration and
17 merchandising purposes and the individual: 1) is compensated
18 for each job or the compensation is based on factors related
19 to the work performed; 2) provides the equipment used to
20 perform the service, unless special equipment is required and
21 provided by the manufacturer through an agency; 3) is
22 responsible for completion of a specific job and for any
23 failure to complete the job; 4) pays all expenses, and the
24 opportunity for profit or loss rests solely with the
25 individual; and 5) is responsible for operating costs, fuel,

.153312.3

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1 repairs and motor vehicle insurance. For the purpose of this
2 subparagraph, "product demonstrator" means an individual who,
3 on a temporary, part-time basis, demonstrates or gives away
4 samples of a food or other product as part of an advertising
5 or sales promotion for the product and who is not otherwise
6 employed directly by the manufacturer, distributor or
7 retailer, and "product merchandiser" means an individual who,
8 on a temporary, part-time basis builds or resets a product
9 display and who is not otherwise directly employed by the
10 manufacturer, distributor or retailer; or

11 (r) service performed for a private,
12 for-profit person or entity by an individual as a landman if
13 substantially all remuneration paid in cash or otherwise for
14 the performance of the services is directly related to the
15 completion by the individual of the specific tasks contracted
16 for rather than to the number of hours worked by the
17 individual. For the purposes of this subparagraph, "landman"
18 means a land professional who has been engaged primarily in:
19 1) negotiating for the acquisition or divestiture of mineral
20 rights; 2) negotiating business agreements that provide for
21 the exploration for or development of minerals; 3) determining
22 ownership of minerals through the research of public and
23 private records; and 4) reviewing the status of title, curing
24 title defects and otherwise reducing title risk associated
25 with ownership of minerals; managing rights or obligations

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1 derived from ownership of interests and minerals; or utilizing
2 or pooling of interest in minerals; and

3 (13) for the purposes of this subsection, if
4 the services performed during one-half or more of any pay
5 period by an individual for the person employing the
6 individual constitute employment, all the services of the
7 individual for the period shall be deemed to be employment
8 but, if the services performed during more than one-half of
9 any such pay period by an individual for the person employing
10 the individual do not constitute employment, then none of the
11 services of the individual for the period shall be deemed to
12 be employment. As used in this paragraph, the term "pay
13 period" means a period, of not more than thirty-one
14 consecutive days, for which a payment of remuneration is
15 ordinarily made to the individual by the person employing the
16 individual. This paragraph shall not be applicable with
17 respect to services performed in a pay period by an individual
18 for the person employing the individual where any of such
19 service is excepted by Subparagraph (f) of Paragraph (12) of
20 this subsection;

21 G. "employment office" means a free public
22 employment office, or branch thereof, operated by this state
23 or maintained as a part of a state-controlled system of public
24 employment offices;

25 H. "fund" means the unemployment compensation fund

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1 established by the Unemployment Compensation Law to which all
2 contributions and payments in lieu of contributions required
3 under the Unemployment Compensation Law and from which all
4 benefits provided under the Unemployment Compensation Law
5 shall be paid;

6 I. "unemployment" means, with respect to an
7 individual, any week during which the individual performs no
8 services and with respect to which no wages are payable to the
9 individual and during which the individual is not engaged in
10 self-employment or receives an award of back pay for loss of
11 employment. The secretary shall prescribe by rule what
12 constitutes part-time and intermittent employment, partial
13 employment and the conditions under which individuals engaged
14 in such employment are eligible for partial unemployment
15 benefits;

16 J. "state", when used in reference to any state
17 other than New Mexico, includes, in addition to the states of
18 the United States, the District of Columbia, the commonwealth
19 of Puerto Rico and the Virgin Islands;

20 K. "unemployment compensation administration fund"
21 means the fund established by Subsection A of Section 51-1-34
22 NMSA 1978 from which administrative expenses under the
23 Unemployment Compensation Law shall be paid. "Employment
24 security department fund" means the fund established by
25 Subsection B of Section 51-1-34 NMSA 1978 from which certain

.153312.3

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1 administrative expenses under the Unemployment Compensation
2 Law shall be paid;

3 L. "crew leader" means a person who:

4 (1) holds a valid certificate of
5 registration as a crew leader or farm labor contractor under
6 the federal Migrant and Seasonal Agricultural Worker
7 Protection Act;

8 (2) furnishes individuals to perform
9 services in agricultural labor for any other person;

10 (3) pays, either on the crew leader's own
11 behalf or on behalf of such other person, the individuals so
12 furnished by the crew leader for service in agricultural
13 labor; and

14 (4) has not entered into a written agreement
15 with the other person for whom the crew leader furnishes
16 individuals in agricultural labor that the individuals will be
17 the employees of the other person;

18 M. "week" means such period of seven consecutive
19 days, as the secretary may by rule prescribe. The secretary
20 may by rule prescribe that a week shall be deemed to be "in",
21 "within" or "during" the benefit year that includes the
22 greater part of such week;

23 N. "calendar quarter" means the period of three
24 consecutive calendar months ending on March 31, June 30,
25 September 30 or December 31;

.153312.3

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1 O. "insured work" means services performed for
2 employers who are covered under the Unemployment Compensation
3 Law;

4 P. "benefit year" with respect to an individual
5 means the one-year period beginning with the first day of the
6 first week of unemployment with respect to which the
7 individual first files a claim for benefits in accordance with
8 Subsection A of Section 51-1-8 NMSA 1978 and thereafter the
9 one-year period beginning with the first day of the first week
10 of unemployment with respect to which the individual next
11 files such a claim for benefits after the termination of the
12 individual's last preceding benefit year; provided that at the
13 time of filing such a claim the individual has been paid the
14 wage required under Paragraph (5) of Subsection A of Section
15 51-1-5 NMSA 1978;

16 Q. "agricultural labor" includes all services
17 performed:

18 (1) on a farm, in the employ of a person, in
19 connection with cultivating the soil or in connection with
20 raising or harvesting an agricultural or horticultural
21 commodity, including the raising, shearing, feeding, caring
22 for, training and management of livestock, bees, poultry and
23 fur-bearing animals and wildlife;

24 (2) in the employ of the owner or tenant or
25 other operator of a farm, in connection with the operation,

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1 management, conservation or maintenance of the farm and its
2 tools and equipment, if the major part of the service is
3 performed on a farm;

4 (3) in connection with the operation or
5 maintenance of ditches, canals, reservoirs or waterways used
6 exclusively for supplying and storing water for farming
7 purposes when such ditches, canals, reservoirs or waterways
8 are owned and operated by the farmers using the water stored
9 or carried therein; and

10 (4) in handling, planting, drying, packing,
11 packaging, processing, freezing, grading, storing or delivery
12 to storage or to market or to a carrier for transportation to
13 market any agricultural or horticultural commodity but only if
14 the service is performed as an incident to ordinary farming
15 operations. The provisions of this paragraph shall not be
16 deemed to be applicable with respect to service performed in
17 connection with commercial canning or commercial freezing or
18 in connection with any agricultural or horticultural commodity
19 after its delivery to a terminal market for distribution for
20 consumption.

21 As used in this subsection, the term "farm" includes
22 stock, dairy, poultry, fruit, fur-bearing animal and truck
23 farms, plantations, ranches, nurseries, greenhouses, ranges
24 and orchards;

25 R. "payments in lieu of contributions" means the

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1 money payments made into the fund by an employer pursuant to
2 the provisions of Subsection B of Section 51-1-13 NMSA 1978 or
3 Subsection E of Section 51-1-59 NMSA 1978;

4 S. "department" means the labor department; and

5 T. "wages" means all remuneration for services,
6 including commissions and bonuses and the cash value of all
7 remuneration in any medium other than cash. The reasonable
8 cash value of remuneration in any medium other than cash shall
9 be established and determined in accordance with rules
10 prescribed by the secretary; provided that the term "wages"
11 shall not include:

12 (1) subsequent to December 31, 1977, that
13 part of the remuneration in excess of the base wage as
14 determined by the secretary for each calendar year. The base
15 wage upon which contribution shall be paid during any calendar
16 year shall be sixty percent of the state's average annual
17 earnings computed by the division by dividing total wages
18 reported to the division by contributing employers for the
19 second preceding calendar year before the calendar year the
20 computed base wage becomes effective by the average annual
21 employment reported by contributing employers for the same
22 period rounded to the next higher multiple of one hundred
23 dollars (\$100); provided that the base wage so computed for
24 any calendar year shall not be less than seven thousand
25 dollars (\$7,000). Wages paid by an employer to an individual

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1 in his employ during any calendar year in excess of the base
2 wage in effect for that calendar year shall be reported to the
3 department but shall be exempt from the payment of
4 contributions unless such wages paid in excess of the base
5 wage become subject to tax under a federal law imposing a tax
6 against which credit may be taken for contributions required
7 to be paid into a state unemployment fund;

8 (2) the amount of any payment with respect
9 to services performed after June 30, 1941 to or on behalf of
10 an individual in the employ of an employing unit under a plan
11 or system established by the employing unit that makes
12 provision for individuals in its employ generally or for a
13 class or classes of individuals, including any amount paid by
14 an employing unit for insurance or annuities, or into a fund,
15 to provide for any payment, on account of:

16 (a) retirement if the payments are made
17 by an employer to or on behalf of an employee under a
18 simplified employee pension plan that provides for payments by
19 an employer in addition to the salary or other remuneration
20 normally payable to the employee or class of employees and
21 does not include any payments that represent deferred
22 compensation or other reduction of an employee's normal
23 taxable wages or remuneration or any payments made to a third
24 party on behalf of an employee as part of an agreement of
25 deferred remuneration;

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underscoring material = new
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1 (b) sickness or accident disability if
2 the payments are received under a workers' compensation or
3 occupational disease disablement law;

4 (c) medical and hospitalization
5 expenses in connection with sickness or accident disability;
6 or

7 (d) death; provided the individual in
8 its employ has not the option to receive, instead of provision
9 for the death benefit, any part of such payment, or, if such
10 death benefit is insured, any part of the premiums or
11 contributions to premiums paid by the individual's employing
12 unit and has not the right under the provisions of the plan or
13 system or policy of insurance providing for the death benefit
14 to assign the benefit, or to receive a cash consideration in
15 lieu of the benefit either upon the individual's withdrawal
16 from the plan or system providing for the benefit or upon
17 termination of the plan or system or policy of insurance or of
18 the individual's service with the employing unit;

19 (3) remuneration for agricultural labor paid
20 in any medium other than cash;

21 (4) a payment made to, or on behalf of, an
22 employee or an employee's beneficiary under a cafeteria plan
23 within the meaning of Section 125 of the federal Internal
24 Revenue Code of 1986;

25 (5) a payment made, or benefit furnished to

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1 or for the benefit of an employee if at the time of the
2 payment or such furnishing it is reasonable to believe that
3 the employee will be able to exclude the payment or benefit
4 from income under Section 129 of the federal Internal Revenue
5 Code of 1986;

6 (6) a payment made by an employer to a
7 survivor or the estate of a former employee after the calendar
8 year in which the employee died;

9 (7) a payment made to, or on behalf of, an
10 employee or the employee's beneficiary under an arrangement to
11 which Section 408(p) of the federal Internal Revenue Code of
12 1986 applies, other than any elective contributions under
13 Paragraph (2)(A)(i) of that section;

14 (8) a payment made to or for the benefit of
15 an employee if at the time of the payment it is reasonable to
16 believe that the employee will be able to exclude the payment
17 from income under Section 106 of the federal Internal Revenue
18 Code of 1986; or

19 (9) the value of any meals or lodging
20 furnished by or on behalf of the employer if at the time the
21 benefit is provided it is reasonable to believe that the
22 employee will be able to exclude such items from income under
23 Section 119 of the federal Internal Revenue Code of 1986."

24 Section 11. TEMPORARY PROVISION--EMPLOYERS' CONTRIBUTION
25 RATE FOR 2005.--Notwithstanding the provisions of Paragraph
.153312.3

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1 (2) of Subsection I of Section 51-1-11 NMSA 1978, each
2 employer's rate for calendar year 2005 shall be the
3 corresponding rate in Schedule 0 of the table provided in
4 Paragraph (4) of that subsection.

5 Section 12. APPLICABILITY.--The provisions of Sections
6 1 through 5 of this act apply to benefit calculations and
7 eligibility determinations made on or after January 1, 2005.

8 Section 13. EFFECTIVE DATE.--The effective date of the
9 provisions of Sections 6 through 10 of this act is the
10 earliest of the following:

- 11 A. January 1, 2008; or
12 B. the January 1 following certification to the
13 governor by the secretary of labor that the unemployment
14 compensation fund is less than two and one-half percent of
15 total payrolls pursuant to the computation provided in
16 Paragraph (1) of Subsection I of Section 51-1-11 NMSA 1978.

17 Section 14. EMERGENCY.--It is necessary for the public
18 peace, health and safety that this act take effect
19 immediately.